

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

3 - - -

4 RONALD FLEMING, : CIVIL ACTION

5 Plaintiff, : NO. 02-164 Erie

6 -VS-

7 SUPERINTENDENT WOLFE, et al, :

8 Defendants. :

15 - - -

16 For the Plaintiffs:

17 Ronald Fleming, pro se
Stilton, Pennsylvania

For the Defendants:

23 REPORTED BY: DENICE A. GRILL, RMR
FERGUSON & HOLDNACK REPORTING, INC.

1 I N D E X

2 Testimony of RONALD FLEMING:

3 Direct Examination Pg. 6

4 Cross-examination by Mr. Mericli Pg. 12

5 Testimony of THOMAS R. WEAVER:

6 Direct Examination by Mr. Fleming Pg. 23

7 Cross-examination by Mr. Mericli Pg. 32

8 Redirect Examination by Mr. Fleming Pg. 43

9 Recross-examination by Mr. Mericli Pg. 42

10 Further Redirect Examination by Mr. Fleming . . Pg. 46

11 Testimony of JOHN TILLER:

12 Direct Examination by Mr. Fleming Pg. 48

13 Cross-examination by Mr. Mericli Pg. 52

14 Redirect Examination by Mr. Fleming Pg. 55

15 Recross-examination by Mr. Mericli Pg. 66

16 Further Redirect Examination by Mr. Fleming . . Pg. 68

17 Testimony of BOYD A. SULLIVAN:

18 Direct Examination by Mr. Fleming Pg. 69

19 Cross-examination by Mr. Mericli Pg. 79

20 Redirect Examination by Mr. Fleming Pg. 82

21 Recross-examination by Mr. Mericli Pg. 84

22 Testimony of DAVID J. EDDY:

23 Direct Examination by Mr. Fleming Pg. 85

24 Cross-examination by Mr. Mericli Pg. 90

25

1 I N D E X

2 Testimony of JOSE MALDONADO:

3 Direct Examination by Mr. Fleming Pg. 91

4 Cross-examination by Mr. Mericli Pg. 96

5 Redirect Examination by Mr. Fleming Pg. 98

6 Testimony of THEODORE ROBINSON, III:

7 Direct Examination by Mr. Fleming Pg. 100

8 Testimony of DONALD KLOS:

9 Direct Examination by Mr. Fleming Pg. 106

10 Cross-examination by Mr. Mericli Pg. 118

11 Redirect Examination by Mr. Fleming Pg. 122

12 Testimony of DANIEL TELEGA:

13 Direct Examination by Mr. Fleming Pg. 124

14 Cross-examination by Mr. Mericli Pg. 129

15 Redirect Examination by Mr. Fleming Pg. 131

16 Testimony of ROBERT KREIDER:

17 Direct Examination by Mr. Fleming Pg. 133

18 Cross-examination by Mr. Mericli Pg. 143

19 Redirect Examination by Mr. Fleming Pg. 150

20 Testimony of PAUL ALLEN:

21 Direct Examination by Mr. Fleming Pg. 153

22 Cross-examination by Mr. Mericli Pg. 158

23 Redirect Examination by Mr. Fleming Pg. 159

24

25

1 I N D E X

2 Testimony of JESSIE WITTEL:

3 Direct Examination by Mr. Fleming Pg. 160

4 Cross-examination by Mr. Mericli Pg. 167

5 Redirect Examination by Mr. Fleming Pg. 168

6 Recross-examination by Mr. Mericli Pg. 169

7 Further Redirect Examination by Mr. Fleming . . Pg. 171

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 JUDGE BAXTER: Morning.

3 MR. MERICLI: Good morning.

4 MR. FLEMING: Morning.

5 JUDGE BAXTER: Are we ready to begin?

6 MR. MERICLI: Yes, your Honor.

7 MR. FLEMING: Yes.

8 JUDGE BAXTER: All right, the case is yours Mr.

9 Fleming, so I turn the stage to you.

10 MR. FLEMING: All right.

11 JUDGE BAXTER: You may begin.

12 MR. FLEMING: I'm going to start with my story.

13 I'm going to get past an opening statement, your Honor.

14 JUDGE BAXTER: All right, then you want to come onto
15 the witness stand?

16 MR. FLEMING: Yeah, I just want to do that.

17 JUDGE BAXTER: You have to get on the witness stand to
18 testify on your own behalf. All right, we'll swear you in,
19 come on up here. Do you want to bring your documents with
20 you, please?

21 MR. FLEMING: Yeah.

22 JUDGE BAXTER: And the exhibits you'll be using.
23 You have a little bit of a place there to lay them.

24

25 RONALD FLEMING, first having been duly

1 sworn, testified as follows:

2

3 CLERK: Sir, would you please, state your full
4 name and spell your last name for the record.

5 THE WITNESS: Ronald E. Fleming, Jr.,

6 F-L-E-M-I-N-G.

7 JUDGE BAXTER: Begin when you wish to, sir.

8

9 **DIRECT EXAMINATION**

10 BY MR. FLEMING:

11 A. I'm going to start with on May 22nd, 2002 I
12 initiated a 1983 action in the U.S. District Court in the
13 Western District of Pennsylvania. On May 20th, 2002 I
14 received a frivolous misconduct from defendant, Captain Weaver
15 for lying to an employee in retaliation for my exercising my
16 First Amendment Rights and the investigation of this
17 supplemental and original 1983 action, which I'll use as
18 Exhibit 1 (indicating).

19 JUDGE BAXTER: Let the record reflect that the
20 exhibit, Exhibit 1, has already been entered into evidence.
21 Go ahead.

22 A. Two grievance were filed on the defendants that
23 assaulted me and denied me medical treatment on May 15th,
24 2002. Exhibit 2, I have the two grievances and medical sick
25 call slips attached with it.

1 JUDGE BAXTER: Let the record reflect Exhibit 2,
2 Plaintiff's Exhibit 2 has already been entered into evidence.

3 A. On August 2nd, 2002 I received a frivolous
4 misconduct from defendant, Officer Davison and Officer
5 Mal donado for destroying, altering, tampering with or damaging
6 property by accusing of breaking a cuff key in retaliation for
7 exercising my First Amendment Right and initiating the
8 original 1983 action. I was found guilty of this misconduct
9 and sanctioned 30 days disciplinary custody. And Exhibit 3,
10 the event was videotaped.

11 JUDGE BAXTER: Let the record reflect Exhibit 3,
12 the individual videotape has already been entered into
13 evidence.

14 A. On August 23rd, 2002 I received a frivolous
15 misconduct from defendant, Officer Davison and Mal donado for
16 assault and refusing to obey an order after an incident that
17 occurred while being escorted outside the morning yard. And
18 in turn being assaulted by Officer Davison by yanking on the
19 yard gate causing it to hit me in the right elbow very hard
20 before it being secured into the yard. In retaliation and
21 placed on cell restriction for eight days before going to a
22 disciplinary hearing, then found guilty. Sanctioned 135 days
23 disciplinary custody. Exhibit 4, videotape. JUDGE
24 BAXTER: Let the record reflect that Exhibit 4, Plaintiff
25 Exhibit 4 has already been placed into evidence.

1 A. On August 31st, 2002 I received a frivolous
2 misconduct from defendant, Captain Robinson for lying to an
3 employee in retaliation based on my abuse allegations against
4 Officer Davison for exercising my First Amendment Rights,
5 which Captain Robinson investigated and found no evidence to
6 support my claims. Exhibit 5, again videotape. JUDGE

7 BAXTER: Exhibit 5 which is the documents and not the
8 videotape has already been entered into evidence.

9 A. New defendants, Camp Hill. On August 11th, 2003 I
10 received a frivolous misconduct from defendant, Officer
11 Wittel, W-I-T-T-E-L.

12 JUDGE BAXTER: Wittel.

13 A. For refusing to obey an order and using abusive,
14 obscene or inappropriate language to an employee in
15 retaliation for the filing of a sworn affidavit for my fellow
16 inmate. Defendants Officer Allen and Sergeant Kreider are
17 also named on the misconduct as witnesses in retaliation as
18 well. I was sanctioned 60 days disciplinary custody for this
19 misconduct. Exhibit 7 --

20 JUDGE BAXTER: Six?

21 MR. FLEMING: Yeah, Exhibit 6. I have seven.

22 JUDGE BAXTER: Six and seven. Six is your
23 affidavit I have here (indicating).

24 MR. FLEMING: My affidavit is six, yeah.

25 JUDGE BAXTER: All right.

1 MR. FLEMING: Okay.

2 JUDGE BAXTER: You're also talking about the
3 misconduct on --

4 MR. FLEMING: Yeah, that's the misconduct on
5 August 11th.

6 JUDGE BAXTER: That's also part of Exhibit 7 I
7 have here (indicating).

8 MR. FLEMING: Yeah, I'm going to go back to six
9 because I missed six, if that's okay.

10 JUDGE BAXTER: That's all right.

11 MR. FLEMING: All right, I'll go to six then and
12 move that into evidence.

13 A. All right, six. On August the 2nd, 2003 I
14 witnessed defendants, Officer Allen, Wittel, Sergeant Kreider
15 assault another inmate, Tyrone Colbert, during a cell search
16 which I filed a sworn affidavit for this fellow inmate,
17 Exhibit 6.

18 JUDGE BAXTER: Let the record reflect that Exhibit
19 6 has been placed into evidence.

20 MR. FLEMING: Seven, please.

21 JUDGE BAXTER: You have already described it, so
22 why don't you give it to me?

23 MR. FLEMING: That's right, Plaintiff Exhibit
24 Number 7 has already been placed into evidence.

25 JUDGE BAXTER: Thank you.

1 A. On August 12th, 2003 I attended my 30 day PRC
2 review and handed staff a request slip clearly indicating that
3 I witnessed these officers assault another inmate during a
4 cell search, and that the August 11th misconduct is in
5 retaliation for me filing the August 12th. So three
6 affidavit, Exhibit 8.

7 JUDGE BAXTER: Let the record reflect that Exhibit
8 has already been placed into evidence.

9 A. On September 15th, 2003 I supplemented the civil
10 action adding a new defendant for violation of my First and
11 Eighth Amendment Rights of the Constitution, and that is not
12 an exhibit, this is something that I --

13 JUDGE BAXTER: That's all right.

14 A. I have the DC-ADM-001 policy as Exhibit 9. That's
15 the policy and --

16 JUDGE BAXTER: What's the point of this? Tell me.

17 MR. FLEMING: To -- Because -- To show that they
18 had to follow procedure whenever you make a claim of anything
19 happening to you, they have to sign certain documents and
20 stuff like that.

21 JUDGE BAXTER: This is a -- This is Exhibit 9, the
22 policy statement, the Inmate Abuse Allegation Monitoring
23 Policy, and it has already been placed into evidence.

24 MR. FLEMING: Excuse me, I have two tapes, Law
25 Library tape, the incident on my way to do some legal research

1 at Albion with segment one with the medical exams, and segment
2 two, that's Exhibit 10. And the morning yard tape is Exhibit
3 11.

4 JUDGE BAXTER: Do you want us to play those now?

5 MR. FLEMING: No, not yet.

6 JUDGE BAXTER: All right, the Exhibits 10 and 11
7 are videotapes. One is a videotape dated 5-14-02. One is a
8 videotape dated 8-23-02. They have already been placed into
9 evidence and the plaintiff does not wish to show those to the
10 Court at this time. All right, continue.

11 MR. FLEMING: Basically, I just wanted to present
12 my story so I can lay a foundation to establish my
13 constitutional violations and that's all I have right now.

14 JUDGE BAXTER: What about your claim for injury?

15 MR. FLEMING: Oh, the violations. JUDGE
16 BAXTER: Your claim of injury, do you want to tell the Court,
17 put into evidence your story of the claim of injury?

18 MR. FLEMING: Yeah.

19 JUDGE BAXTER: You told me about the gate with the
20 elbow, you told me about the broken cuff key. I'm not sure I
21 heard about everything you have in your pretrial statement.

22 MR. FLEMING: That's --

23 JUDGE BAXTER: Have you listed everything?

24 MR. FLEMING: Yeah.

25 JUDGE BAXTER: Are you prepared to go into

1 cross-examination?

2 MR. FLEMING: Right, during my cross and my direct
3 I can establish more, get into more detail. JUDGE

4 BAXTER: Well, this is your direct.

5 MR. FLEMING: Okay.

6 JUDGE BAXTER: Okay. So if there's anything else
7 you want to say before being placed under cross-examination,
8 this is your time.

9 MR. FLEMING: I'm ready for the cross.

10 JUDGE BAXTER: All right, Mr. Mericli, cross-examination.

11 MR. MERICLI: May it please the Court, does your
12 Honor mind if from time to time I may be seated during the
13 cross-examination?

14 JUDGE BAXTER: That's quite all right, anything
15 that's comfortable for counsel.

16 MR. MERICLI: Thank you.

17

18 CROSS-EXAMINATION

19 BY MR. MERICLI:

20

21 Q. You had your back turned to him when you say Mr.
22 Tiller tried to trip you, right?

23 A. Yes.

24 Q. You weren't looking directly at him when he, as
25 you say, tried to trip you?

1 A. Afterwards I did, but I wasn't expecting it to
2 happen that way, so I just kept following procedure.

3 Q. But you knew it was Tiller right away?

4 A. I knew for a fact it was him.

5 Q. But you didn't see him do it?

6 A. I didn't see him but he was the officer that
7 escorted me with the tether.

8 Q. You say the video depicts him, shows him actually
9 either attempting to trip you or kicking you?

10 A. The video shows him striking me in my -- in my
11 right ankle. And it felt more like a kick. I don't -- I
12 can't really say if it was intended to kick me or trip me but
13 it was a kick.

14 Q. But, Mr. Fleming, you are saying today under oath
15 in this court that if one looks carefully at that video, even
16 if one looks at it in stop motion or if one rewinds it slowly
17 through the incident, you will actually see Mr. Tiller's foot
18 come in contact with your ankle?

19 A. The tape will clearly show -- Not only will it
20 show but it will establish that I was injured in the second
21 segment due to the immediate --

22 Q. Well, thank you. Thank you. I understand that
23 you have some other points to make, but my point here -- And
24 let's leave on that point that you say the tape will clearly
25 show, am I correct, Mr. Tiller's foot coming in contact in the

1 nature of a kick with your ankle?

2 A. Yes, it will.

3 Q. Very good. That leads to the next point actually,

4 Mr. Fleming. You've seen the tape of Mr. Klos, the nurse, I
5 believe -- Is he here? Yes, there he is. Good morning, sir.

6 You've alluded to that already, that Mr. Klos examined
7 you in the aftermath of whatever incident occurred with Mr.
8 Tiller, right? You saw that tape?

9 MR. FLEMING: Objection, that's -- Objection,
10 that's irrelevant.

11 JUDGE BAXTER: You're objecting to the question as
12 irrelevant. Mr. Mericli?

13 MR. MERICLI: The question is directly related to
14 testimony that he gave on the stand and the issues before the
15 Court. I'm simply asking him if he recalls having seen what
16 he's testified to earlier, which is the videotaped medical
17 examination by Mr. Klos that took place in the aftermath of
18 the incident with Mr. Tiller.

19 JUDGE BAXTER: I see. Objection overruled, he can
20 ask you that.

21 BY MR. MERICLI:

22 Q. You mentioned that as segment two. So let's just
23 clear away the smoke there and -- which may have been of my
24 making and get to the point. You remember seeing the video of
25 Mr. Klos examining you?

1 A. Yes, I do, it will be showed through that.

2 Q. You say he did not examine your ankle?

3 A. No, he did not.

4 Q. You say he did not examine your wrist?

5 A. I had handcuffs on the whole time.

6 Q. Am I right you say your wrist was cut and
7 bleeding?

8 A. It was hurting bad.

9 Q. But it wasn't cut?

10 A. It was -- It was -- It was cut.

11 Q. And blood -- You were bleeding?

12 A. It wasn't -- It wasn't bleeding where it was bad
13 but it was, yes, it was. My skin was -- My skin was damaged,
14 yes, it was.

15 Q. So your skin was broken?

16 A. Yes, it was.

17 Q. Okay. You say you never had x-rays taken of your
18 ankle and your wrist in some of those materials that you've
19 introduced today?

20 A. Repeat that again.

21 Q. Did you have any x-rays taken?

22 A. I believe I did have a x-ray for my -- my elbow.

23 JUDGE BAXTER: Mr. Mericli, is this on this
24 incident or for --

25 MR. MERICLI: No, just on this incident. I don't

1 believe we have any medical records or testimony with regard
2 to the elbow incident.

3 JUDGE BAXTER: This question is, did you have --
4 On this incident did you have any x-rays taken?

5 THE WITNESS: No, I did not.

6 BY MR. MERICLI:

7 Q. During the videotape exam by Mr. Klos you could be
8 heard admitting that you were spitting in the direction of
9 corrections officers, right?

10 A. No, I did not admit that.

11 Q. So you're testifying here today that if the Court
12 listens to the videotape it will not hear you admit to
13 spitting?

14 A. It will, yes, it will.

15 Q. It will hear you admit to spitting?

16 A. Yes, it will.

17 Q. Well, then I don't understand. Maybe you can it
18 explain to me. I just asked you if you in fact admitted to
19 spitting during the videotaped exam with Mr. Klos and you
20 said, no. And then subsequently you said, yes. Could you
21 clear up my confusion?

22 A. Yes, I can.

23 Q. Please do.

24 A. I admitted to spitting but not in the direction of
25 any officer after the fact.

1 Q. What did you spit on and why?

2 A. The reason why I did it, because of the assault
3 that I suffered and I had no other way to release my anger and
4 that's what I did.

5 Q. Where did you spit?

6 A. Inside the law library.

7 Q. What did you spit on?

8 A. I can't recall what it was on or where it was at,
9 but I do admit that I did do it.

10 Q. Okay. Do you remember when Mr. Telega, the
11 physician's assistant, who is in the courtroom today examined
12 you after the incident with Tiller?

13 A. Yes, I do.

14 Q. Okay. Did he look at your ankle?

15 A. Yeah, he looked at it. Yeah. Yes, he did, he
16 looked at it.

17 Q. And he looked at your wrist?

18 A. He looked at both, yes, he did.

19 Q. Now, I'd like to you take a look at Exhibit 6 that
20 you have there. I think I can put it here. JUDGE
21 BAXTER: I'll give it to him.

22 Q. Do you remember this (indicating)? We looked at
23 it yesterday?

24 JUDGE BAXTER: It's also on your screen, Mr.
25 Fleming.

1 A. Oh, this is --

2 JUDGE BAXTER: We're high tech here.

3 A. No, six on yours -- Okay, yeah. This ain't --

4 This is the request that --

5 Q. We marked this yesterday as Plaintiff Exhibit 6?

6 A. Mine must be seven.

7 CLERK: Six is the sworn affidavit.

8 MR. MERICLI: That was suppose to be eight. I

9 believe we got it confused. What number is this --

10 JUDGE BAXTER: Let me find it for you.

11 MR. FLEMING: I don't know where yours is.

12 JUDGE BAXTER: It's number eight.

13 MR. MERICLI: Thank you.

14 Q. I'm sorry, it's Exhibit Number 8. Can you tell me
15 what the date on that is?

16 A. August 12th, 2003.

17 Q. What date did corrections Officer Wittel give you
18 the misconduct?

19 A. August -- Can I see that exhibit? I believe --
20 Yeah, okay.

21 THE WITNESS: Your Honor, may I please see --

22 JUDGE BAXTER: Which one?

23 THE WITNESS: The misconduct I got from Officer
24 Wittel.

25 JUDGE BAXTER: It's Exhibit 7. Here you go

1 (indicating).

2 BY MR. MERICLI:

3 Q. What about if I suggest to you it was August 11th,
4 the day before?

5 A. I can tell you now. August 11th, yes, it was.

6 Q. Okay, very good. Now, let's take a look at
7 Exhibit 6. Do you recognize that?

8 A. Yes, I do, that's -- Yes, I do.

9 Q. On the second page could you tell us what the date
10 of that is?

11 A. August 2nd.

12 Q. Okay. So that's how many days before the
13 misconduct?

14 A. Exactly nine days.

15 Q. Okay. I'd like you to take a look at something
16 that's in my Exhibit "C". Do you have a copy of that up there
17 or do you want to wait until I put it on the screen?

18 A. Yeah, you can put it on the screen.

19 Q. I'm sorry, it's Exhibit "E". Captain Weaver's
20 report, and one of the attachments on that that we looked at
21 yesterday is your grievance that you wrote about the incident
22 with Mr. Tiller. Do you remember that?

23 A. Yes, I do.

24 Q. And here it is (indicating). Do you recognize
25 this as the grievance that I just referred to?

1 A. Yes, I do.

2 Q. Can you tell us the date on it?

3 A. May 15th, 2002.

4 Q. Okay, could you read beginning here (indicating)?

5 Could you read this part that required you to provide a brief,
6 clear statement of your grievance, please?

7 A. Yes, I can.

8 Q. Please do.

9 A. "This grievance is not retaliation, but to let you
10 know that, first of all, whenever I exit my cell I'm placed on
11 camera. After reviewing the camera that's been placed on me
12 since April 21st, 2002 it will clearly establish that I was
13 assaulted by CO Tiller and CO Sullivan on my way to the law
14 library. All of this --" -- All of this while in the
15 presence of Sergeant Eddy. Also I spoke to RHU Lieutenant
16 Morrow and Lieutenant Jones, they never checked into. Also
17 I've been trying to get my --" -- I've been trying to get my
18 injuries checked into. CO Tiller kicked me in my right ankle
19 while exiting my cell. Then once I got into the law library,
20 after the cuffs were removed CO Sullivan slammed my right
21 wrist through the wicker and held it trapped there for about
22 10 seconds. I am --" I can't see because you keep --

23 CLERK: Nobody is touching it. I don't know why
24 it's doing that.

25 THE WITNESS: I'm touching it up here.

1 CLERK: That's why. If you touch it it puts an
2 arrow on it.

3 A. That's -- I'm sorry. "I am assuming that the
4 video camera will not be checked into for their illegal
5 actions. But if so, you will see the truth."

6 Q. Thanks. Where does it say there that Sullivan
7 used his foot?

8 A. It doesn't say.

9 MR. MERICLI: Okay. I have no further questions
10 at this time.

11 JUDGE BAXTER: Thank you. All right, you have --
12 You're on redirect now, which means if there's anything that
13 he asked you that you want to clear up, anything else you want
14 to say, this is your chance to say it.

15 MR. FLEMING: These are non-leading, right?
16 Redirect is non-leading?

17 JUDGE BAXTER: Well, you're not asking questions
18 of yourself, you're not asking questions of him either. This
19 is your opportunity to give any more testimony.

20 MR. FLEMING: For me?

21 JUDGE BAXTER: That's right and if you have no
22 more testimony you will step down and call your next witness.

23 MR. FLEMING: No further questions. JUDGE
24 BAXTER: All right, you may step down, Mr. Fleming, and call
25 your next witness.

1 MR. FLEMING: All right

2 JUDGE BAXTER: I'll give you a few minutes to
3 collect your things there.

4 MR. FLEMING: All right, thank you. I'd like to
5 call -- Can I stand up?

6 JUDGE BAXTER: You sure may. You may do whatever
7 is more comfortable for you.

8 MR. FLEMING: I'd like to call my first witness,
9 which is -- He's not here. May I ask --

10 MR. MERICLI: Who would you like to call?

11 MR. FLEMING: It's been awhile. Some of these faces, I ain't
12 familiar with.

13 JUDGE BAXTER: That's okay. Call the name and
14 you'll see who is attached to the face.

15 MR. FLEMING: Captain Weaver.

16 MR. MERICLI: Captain Weaver is here. JUDGE
17 BAXTER: Captain Weaver, would you please come up here? Keep
18 your voice, Mr. Fleming, toward the microphone because it's
19 hard for the Court Reporter to hear you. You're mumbling
20 sometimes, okay.

21 MR. FLEMING: Okay.

22 JUDGE BAXTER: I get to see some of these names
23 with the faces today, too.

24

25 T H O M A S W E A V E R, first having been duly sworn,

1 testified as follows:

2

3 CLERK: Sir, would you please state your full name
4 and spell your last name for the record.

5 THE WITNESS: Thomas R. Weaver, W-E-A-V-E-R.

6

7 DIRECT EXAMINATION

8 BY MR. FLEMING:

9

10 Q. Good afternoon. Please, state your name again.

11 A. Thomas R. Weaver.

12 Q. Thank you. How are you employed?

13 A. I'm a Captain with the Department of Corrections
14 at SCI Albion.

15 Q. How long have you been a captain there?

16 A. Since 2000. It will be five and a half years.

17 March of 2000.

18 Q. How long have you been involved in the department
19 of corrections work?

20 A. It will be 22 years in January.

21 Q. I want to direct your attention to the incident of
22 May 14th, 2002. What were your duties that day?

23 A. I was assigned as the intelligence captain.

24 Q. Can you describe the operation?

25 A. Of the intelligence captain? Or this specific

1 investigation?

2 Q. I would like to direct your attention to May 14th
3 of 2002, what were your duties that day?

4 A. This particular day I conducted the investigation
5 into your abuse allegations.

6 Q. Can you describe the operation?

7 A. The investigation took place, I reviewed the
8 documents that you had submitted, reviewed the videotapes and
9 conducted interviews.

10 MR. MERICLI: Your Honor, if I may interject, I
11 believe he asked him about May 14th, 2002. I think there
12 might be some confusion at this point about whether or not
13 he's asking him about an investigation conducted of events on
14 May 14th, 2002 or what in fact he did on May 14th, 2002.
15 There's nothing relevant --

16 JUDGE BAXTER: It may be, but he's the witness,
17 he's the one testifying. So?

18 A. I'm not sure. Could you be a little more specific
19 as to what you're after?

20 MR. FLEMING: Your Honor, may I just lead him to
21 where he needs to be at? Like --

22 JUDGE BAXTER: Can you lead the witness?

23 MR. FLEMING: Just to get him --

24 JUDGE BAXTER: Permission granted, yes, he's a
25 defendant, he's definitely a hostile witness.

1 BY MR. FLEMING:

2 Q. I'm speaking in terms of the incident with the --
3 going to the law library, the investigation you did with me,
4 going there and coming back.

5 A. Okay, you're speaking of my investigation?

6 Q. Right.

7 A. Okay.

8 Q. Can you describe the operation?

9 A. Of my investigation?

10 Q. Yes.

11 A. I would have reviewed all the documents included,
12 and done my interviews, including you and the staff members
13 involved.

14 Q. Thank you. During the course of your duties that
15 day, did you come in contact with the plaintiff in the
16 courtroom today --

17 A. I'm not sure if the 14th is the exact day of the
18 investigation. I don't have the report in front of me and I
19 don't remember which day I interviewed you, but I did
20 interview you as part of the investigation.

21 Q. What was the date? But you do remember?

22 A. I do not remember. I do not have a copy of the
23 investigation with me.

24 Q. You do remember coming in contact with me?

25 A. I interviewed you a few days after the alleged

1 incident.

2 MR. FLEMING: Your Honor, can I give him --

3 JUDGE BAXTER: You can refresh his recollection with a
4 document if you'd like.

5 BY MR. FLEMING:

6 Q. It was May 20th; do you remember that?

7 A. I won't argue that that's not the date. As I
8 said, I don't have the investigation in front of me.

9 Q. That's good enough. But you do remember coming in
10 contact with me?

11 A. As I said, yes, I did interview you.

12 Q. Are you positive it was me, the plaintiff?

13 A. Yes, I'm positive it was you.

14 Q. I just want to back up.

15 JUDGE BAXTER: Mr. Fleming, you look uncomfortable
16 standing. You can sit down if you'd like. MR.

17 FLEMING: No, I'm okay.

18 JUDGE BAXTER: Sorry, never mind.

19 MR. FLEMING: I'm into it now.

20 BY MR. FLEMING:

21 Q. I just want to back up. What did you -- What was
22 your results of that coming in contact with me, and what did
23 it -- what did it entail?

24 A. The results of my interview with you?

25 Q. Right.

1 A. I found that the allegations you had made were not
2 substantiated by anything you told me and by the review of the
3 videotape.

4 Q. Was it the videotape that you reviewed?

5 A. I did review the videotape before I interviewed
6 you.

7 Q. And this videotape showed the whole incident?

8 A. It shows where you allege that you were kicked.
9 It does not show the incident where you alleged the wicker was
10 closed on your hand.

11 Q. Do you remember giving a sworn affidavit on
12 November 19th, 2004?

13 A. I did an affidavit. I don't remember the exact
14 date.

15 MR. FLEMING: Can I present this to him, your
16 Honor?

17 JUDGE BAXTER: You may approach the witness to
18 hand him a document, yes. Do I have that as an exhibit?

19 MR. MERICLI: Your Honor, I believe it's marked as
20 Exhibit "E". This is a copy of it here (indicating), if you
21 would prefer him to use that.

22 MR. FLEMING: I'd like the record to reflect that

23 --

24 JUDGE BAXTER: Exhibit "E" is also -- Would you
25 mind placing that under the document viewer for me?

1 MR. MERICLI: Not at all.

2 JUDGE BAXTER: Let the record reflect that the
3 plaintiff is showing the witness the last page I believe.

4 A. You're showing me the date, is that what you're
5 showing me?

6 Q. Yeah.

7 A. November 9th?

8 JUDGE BAXTER: It reflects the 9th.

9 Q. Do you remember giving a sworn --

10 A. Yes.

11 Q. Okay, thank you. I have something else. I would
12 like to keep this here for a minute.

13 JUDGE BAXTER: Can you flip that one back?

14 CLERK: Yes.

15 JUDGE BAXTER: It's suppose to be November 19th.
16 Do you have a date there?

17 MR. MERICLI: I can find that.

18 JUDGE BAXTER: Can you do that for me, because the
19 one I have is October 22nd, so I must have had the wrong one.

20 MR. MERICLI: The November 19th is the date that I
21 mailed them and that's my signature date on the back.

22 JUDGE BAXTER: Did the witness see the date November 19th on
23 the document he looked at?

24 THE WITNESS: It's on the very last page, that's
25 the date that the attorney --

1 JUDGE BAXTER: Certificate of service.

2 CLERK: Yes, it's the certificate of service.

3 JUDGE BAXTER: All right.

4 THE WITNESS: It wasn't the date of the actual --

5 JUDGE BAXTER: It wasn't the date of the
6 affidavit, okay.

7 MR. FLEMING: Can you put that on page -- on this
8 page right here (indicating), question number 16?

9 CLERK: Yes. Do you want the typed answer?

10 MR. FLEMING: Right here (indicating). JUDGE
11 BAXTER: Next is the answers.

12 MR. FLEMING: Yes.

13 JUDGE BAXTER: It should have the question as
14 well. Number 16 here is "If the answer to question", that
15 one?

16 MR. FLEMING: Yes.

17 BY MR. FLEMING:

18 Q. You were asked, "If the answer to question 14 is
19 yes, do you have any knowledge of any item mentioned there
20 being altered in any manner, lost or destroyed? And you
21 stated, no, under oath?

22 A. That's what I stated.

23 Q. All right. And I'd like to go to your
24 investigation that you conducted.

25 JUDGE BAXTER: Is his report part of this exhibit,

1 Mr. Mericli?

2 MR. MERICLI: Yes, it is.

3 JUDGE BAXTER: All right.

4 Q. I'd like to read this for you, if it's all right.

5 JUDGE BAXTER: We can also have it on the screen,
6 so hold on one second.

7 Q. Page six, right here (indicating). Sorry, go to
8 page eight, the summary. And I'm just going to read to a
9 certain point. I'm not going to read the whole thing of what
10 you stated in the investigation.

11 "On 5-14-02 Inmate Fleming, EM-7566 was being escorted
12 from his cell (H/B 8) to the Law Library by C01 Tiller and C01
13 Massey. The escort was being videotaped by C01 Sullivan.
14 Inmate Fleming has alleged that, during that escort Officer
15 Tiller kicked/tripped him causing injury to his right ankle
16 and that when placed in the Law Library Officer Sullivan
17 slammed his arm with the wicker door and that Sergeant Eddy
18 witnessed all of this. All staff involved deny that Fleming
19 was kicked or tripped by Officer
20 Tiller. Additionally, all staff deny that Officer Sullivan
21 slammed the wicker door on inmate Fleming's arm. The video of
22 the escort shows inmate Fleming stumble. Officer Tiller is
23 following him holding on to the tether. There is
24 approximately 12 to 18 inches of the tether stretched out and
25 Officer Tiller's arm appears to be almost completely extended,

1 putting him several feet behind Fleming. It would have been
2 extremely difficult if not impossible for him to have
3 kicked/tripped Fleming without it being very obvious on the
4 video. The video stops just prior to the cuffs being removed
5 and in the law library."

6 MR. FLEMING: I would like to have that moved into
7 evidence.

8 JUDGE BAXTER: It already is part of the evidence.

9 MR. FLEMING: Okay.

10 JUDGE BAXTER: But it is noted in the record.

11 MR. FLEMING: All right, thank you. No further
12 questions for him, your Honor.

13 JUDGE BAXTER: All right, Mr. Mericli.

14

15 CROSS-EXAMINATION

16 BY MR. MERICLI:

17

18 Q. Have you had an opportunity to review the report
19 of your investigation into the incident in which Mr. Tiller is
20 accused of having kicked Mr. Fleming?

21 A. Yes, sir.

22 Q. Did you review it in preparation for your
23 testimony here today?

24 A. Briefly, yes, sir.

25 JUDGE BAXTER: Mr. Fleming, I'd like to you sit

1 during his examination if that's all right.

2 MR. FLEMING: All right.

3 JUDGE BAXTER: Thank you.

4 BY MR. MERICLI:

5 Q. You mention in your direct examination that you
6 have reached some conclusions regarding the truth of his
7 accusations in the course of your investigation; did you not?

8 A. Yes, I did.

9 Q. What specifically? Could you reiterate were those
10 conclusions?

11 A. There were a number of allegations made that
12 Officer Tiller kicked inmate Fleming at the time, and
13 intentionally that his hand was slammed in the wicker, that he
14 had -- He also alleged in his grievance --

15 Q. By whom that his hand was slammed in the wicker?

16 A. By Officer Sullivan.

17 Q. So there was an allegation with regard to Tiller
18 kicking him and an allegation with regard to Sullivan slamming
19 his hand in the wicker?

20 A. Correct.

21 Q. What is a wicker?

22 A. It's a door that is approximately 18 inches by 12
23 inches that's located at a height to facilitate cuffing and
24 uncuffing. So --

25 Q. It's a slot?

1 A. So the door would have been opened, he would have
2 stepped back to the door, he would have been unhandcuffed
3 through that door.

4 Q. It's a slot in a door?

5 A. Correct, with a metal door -- a smaller metal door
6 that covers that.

7 Q. So it's something like a mail slot that we might
8 have in our homes or something like that?

9 A. In a manner of speaking.

10 Q. It's used for what purposes?

11 A. On the -- On this particular door, which was the
12 law library, it would have been used to apply and remove
13 handcuffs or also pass legal material through the door, any
14 material that might be passed to the inmate.

15 Q. So when an inmates hands are -- handcuffs are
16 removed, he backs up to the door?

17 A. He backs up to the door.

18 Q. And that's how he is cuffed, he puts his hands,
19 back in the wicker, through the door?

20 A. That's correct.

21 Q. And the assisting staff opened this slot and his
22 hands come out or his hands go in, right?

23 A. Correct.

24 Q. Okay. That's what we're talking about when we're
25 talking about a wicker?

1 A. That's the wicker door, yes, sir.

2 Q. Do you know why it's called a wicker?

3 A. I have no idea.

4 Q. Thank you.

5 JUDGE BAXTER: The door slides side to side or up
6 and down?

7 THE WITNESS: These doors actually hinge and open
8 outward.

9 JUDGE BAXTER: Okay, thank you. Excuse me, Mr.
10 Mericli.

11 MR. MERICLI: Not at all, your Honor
12 BY MR. MERICLI:

13 Q. Does it drop then to kind of like a -- provide
14 like a drop leaf?

15 A. They normally drop down and form like a shelf.

16 Q. Okay, thank you. Going back to these two
17 incidents, one involving Tiller and one involving Sullivan,
18 what had Mr. Fleming alleged happened to him?

19 A. He alleged that Officer Tiller kicked him and he
20 alleged that the Officer Sullivan slammed the wicker door
21 closed on his hand.

22 Q. Did he say how Sullivan did that?

23 A. No, he did not.

24 Q. Did you ever hear him say that Sullivan used his
25 foot to do that?

1 A. No, I did not, I was never told that.

2 Q. In the course of your investigation, you
3 interviewed him?

4 A. Yes, I did.

5 Q. And you discussed his allegations?

6 A. Yes, I did.

7 Q. How did he convey to you Sullivan did whatever he
8 alleged Sullivan had done to him?

9 A. He indicated that he slammed the door. Although
10 Officer Sullivan was the camera operator, not the officer
11 taking the handcuffs off.

12 Q. Now, I would note for the record when you said he
13 slammed the door, you raised your hands upwards?

14 A. That was my understanding.

15 Q. You raised your hands upward as if you were
16 lifting something --

17 A. Yes.

18 Q. -- Imaginary?

19 A. Yes.

20 Q. That's what he showed you?

21 A. That was my understanding, yes.

22 Q. Okay. Was that an assumption or was that the way
23 he conveyed it to you?

24 A. At this point I would have to say, I may have been
25 making an assumption.

1 Q. But as if it were an assumption, am I correct that
2 it was a working assumption, so that while were you exchanging
3 information, yourself with Mr. Fleming, it was at all times
4 clear that that's what you were talking about, that the hands
5 were lifted and raised up?

6 A. Yes.

7 Q. Thank you. You reached some conclusions about his
8 grievance?

9 A. Yes, he had also alleged the -- that he had -- he
10 alleged to me that he had not been seen by medical, that he
11 had not been treated by medical. I questioned -- When I
12 questioned him I asked him, you're telling me were you not
13 seen by medical? And this interview took place approximately
14 four, five days after the fact, after the incident and I had
15 already reviewed --

16 Q. Let's take a look. Can you tell from your report?
17 If I hand you a copy of your report, can you tell what date
18 the interview took place?

19 A. Maybe. Sometimes I mark it on there, but I don't
20 always do that.

21 Q. How about this (indicating), does that help you?

22 A. Yes, in this particular case did I mark it. I
23 interviewed him on the 20th.

24 Q. Okay. What did he tell you about the medical
25 aftermath of these incidents?

1 A. He told me he had not been treated, he had not be
2 seen.

3 Q. What did you determine to be the truth or falsity
4 of that statement?

5 A. Prior to this I had reviewed medical documentation
6 that he had been seen on several occasions, both by Nurse Klos
7 that very day that this took place, approximately an hour and
8 a half or so after the incident. That examination was
9 videotaped. I reviewed the videotape. He told me he had not
10 touched his hand, he had not touched his -- looked at his
11 hands or foot. It's clear in the videotape that the nurse did
12 manipulate the hands and the foot during his examination.

13 He had also been seen later by Mr. Telega. Orders were
14 given for x-rays. Whether or not they prescribed them or
15 anything, I don't know. At this point I don't remember.

16 Q. So what conclusion did you reach --

17 A. My conclusion was that he had been seen by medical
18 and had been seen on a very timely basis.

19 Q. What did that tell you about his statement to you
20 about --

21 A. That they were patently false.

22 Q. Thank you. Have you had any reason to qualify,
23 retract or change any of the statements or any of the
24 conclusions that you reached in your report?

25 A. No.

1 Q. Do you recall an incident with Corrections Officer
2 DeForce that may have had some relationship to this event?

3 MR. FLEMING: Objection.

4 JUDGE BAXTER: What's your basis? Why are you
5 objecting?

6 MR. FLEMING: Relevance.

7 JUDGE BAXTER: Well, it's hard to tell from the
8 question where you're going, Mr. Mericli

9 MR. FLEMING: The --

10 JUDGE BAXTER: Wait a minute.

11 MR. MERICLI: The report --

12 JUDGE BAXTER: Is there going to be testimony that
13 he did?

14 MR. MERICLI: The report refers to the fact that
15 he looked into an event that preceded in time on the same
16 date.

17 JUDGE BAXTER: So it's in this report?

18 MR. MERICLI: It's in the report. JUDGE
19 BAXTER: That's part of the evidence, so it's relevant.
20 Objection overruled.

21 BY MR. MERICLI:

22 Q. Do you recall looking into that?

23 A. Yes, I do. If I remember correctly, Officer
24 DeForce had written a misconduct earlier in the day for Mr.
25 Fleming.

1 Q. How, if any way, did you see that relating to Mr.
2 Fleming's grievance?

3 A. This action may have been retaliatory as a result
4 of that misconduct, the allegations that were made by Mr.
5 Fleming.

6 Q. Retaliatory in what sense?

7 A. Mr. Fleming was retaliating against staff for his
8 receiving a misconduct earlier in the day.

9 Q. You're suggesting this was some sort of a --

10 A. Suggesting it was some sort of a possibility.

11 Q. You're suggesting it was a possibility this might
12 be a counterweight?

13 A. Yes, sir.

14 Q. But that's a speculation on your part?

15 A. Speculation entirely.

16 Q. That's an inference on your part?

17 A. Yes.

18 Q. As a result of the conclusions that you reached in
19 this investigation, what if anything did you do?

20 A. As a result, the investigation would have been
21 submitted to my superiors and also sent forth to the Office of
22 Professional Responsibility in Harrisburg.

23 Q. Did you take any further action --

24 A. I wrote a misconduct on Mr. Fleming for --

25 Q. What was --

1 A. -- For lying to me.

2 Q. Do you know what happened to that?

3 A. I don't remember the results of the misconduct.

4 Q. Do you have any reason to think that he was not
5 found guilty of it?

6 A. No, I have no reason to believe that at all.

7 Q. What if anything did your decision to file that
8 misconduct have to do with the fact that Mr. Fleming had been
9 working on a civil rights complaint against Superintendent
10 Wolfe, Deputy Kormanic, Deputy Marquardt or Mr. Boeh, Hearing
11 Examiner Barnett, Unit Manager Skendall, Mr. Barr the
12 Superintendent Assistant, and the Business Manager -- I'm not
13 sure what gender, McCarthy?

14 A. Mr. McCarthy.

15 Q. Mr. McCarthy?

16 A. I had no knowledge of that suit.

17 Q. Did you know he had been working on it?

18 A. No.

19 Q. Did you know whether or not it had been sent to
20 federal court?

21 A. I did not know anything about it, no.

22 Q. Did you hear him say the day it was filed on May
23 22nd of 2002, when he testified?

24 A. No, I don't remember, I don't recall.

25 Q. I see. Were you able to determine if the complete

1 examination by Mr. Klos and Mr. Fleming appears on the
2 videotape?

3 A. The examination by Mr. Klos is on the videotape.

4 Q. Were you able -- Is there any apparent
5 interruption or any reason to believe it's not the complete
6 examination?

7 A. No, it appeared to be the complete examination.

8 MR. MERICLI: Thank you, sir, I have no further
9 questions. Your witness, sir.

10

11 REDIRECT EXAMINATION

12 BY MR. FLEMING:

13

14 Q. So you stated that you -- that you don't know if
15 it was -- my claim was being -- having my arm slammed in the
16 wicker was with a foot or not?

17 A. You never mentioned it being done with a foot.

18 Q. Was it in the video?

19 A. No. As I stated to you earlier, the video stopped
20 at the beginning of the unhandcuffing.

21 Q. Let me redirect your attention back once more,
22 your investigation, in your interrogatories of production you
23 clearly state under oath that you do not have any knowledge of
24 this tape being lost, destroyed, altered or tampered; is that
25 correct?

1 A. Correct.

2 Q. And in your investigation report you clearly state
3 that the tape stops just before the handcuffs are removed out
4 of the wicker; is that correct?

5 A. Correct.

6 MR. FLEMING: No, further questions your Honor.

7 JUDGE BAXTER: Thank you. Anything else, Mr. Mericli?

8 MR. MERICLI: Yes, your Honor.

9

10 RECROSS-EXAMINATION

11 BY MR. MERICLI:

12

13 Q. In the course of preparing for this lawsuit, do
14 you recall being asked to locate any and all videotapes that
15 related to the allegations made in Mr. Fleming's complaints?

16 A. Yes, sir.

17 Q. Did you in fact execute an affidavit relatively
18 recently? I'll show you a copy of it and hand it to you
19 (indicating), it's Exhibit "F". I can show it to you here
20 (indicating), this is Exhibit "F".

21 Let me briefly page through it, so you can reacquaint
22 yourself with it. Would you note the date for us there?

23 A. The date is September 28th, 2005.

24 Q. You recall this affidavit now that I've refreshed
25 you?

1 A. Yes.

2 Q. In the course of this affidavit, am I correct that
3 you swear that you looked for all the tapes --

4 A. Yes, I did.

5 Q. -- That he makes reference to?

6 A. Yes, sir, I did.

7 Q. And the only tapes you were able to find were the
8 two that you provided to me?

9 A. That's correct.

10 Q. If I may, the Court has marked them as Exhibits
11 "A" and "B" for the defense, and 10 and 11 for the plaintiff.
12 And you were not able to locate any other tapes?

13 A. No, I was not.

14 Q. When you look at the tape of Mr. Fleming being
15 taken to the law library, we can agree that the taping ends
16 after he's placed inside the law library; can we not?

17 A. True, yes, sir, we can.

18 Q. Is that the customary point to end a videotape of
19 that movement, evolution?

20 A. It varies on the camera operator, every operator
21 is different.

22 Q. Thank you. Is there anything particularly
23 unusual? Have you seen that before --

24 MR. FLEMING: Objection.

25 JUDGE BAXTER: Basis?

1 MR. FLEMING: Relevance.

2 JUDGE BAXTER: Overruled.

3 BY MR. MERICLI:

4 Q. Have you seen it before in other instances or is
5 it unique to this one case?

6 A. I have seen it -- I have seen it before.

7 Q. Now back to your affidavit, you say that you were
8 not aware of an incident in which two cameras were set up
9 inside the RHU Law Library, no such tapes were found. Can you
10 explain that to us, to the Court, what were you attempting to
11 --

12 A. I believe that was the -- You'd have to read the
13 question itself.

14 Q. The question itself?

15 A. For that particular --

16 Q. I was attempting to avoid that because it's
17 difficult to read.

18 MR. FLEMING: Number two.

19 Q. "Is there also --" Let's see, "Is there also a
20 overhead (H-block) (B-pod) (RHU) video camera, too, of the
21 alleged incident of May 14th, '02?"

22 A. I think that particular question was a question
23 further down. "Produce a copy of the video of the plaintiff
24 where two cameras were set up inside the mini library."

25 Q. I see, yes, you're right.

1 A. And to my knowledge there was never an incident
2 where two cameras or a camera was set up inside the law
3 library, that's what I was trying to establish by my answer.

4 MR. MERICLI: Thank you. My clumsy questioning
5 was an attempt to get you to focus on that piece of
6 information for the Court. Thank you. No further questions
7 of Captain Weaver.

8 JUDGE BAXTER: Anything on what he just asked?

9 MR. FLEMING: Yes.

10

11 FURTHER REDIRECT EXAMINATION

12 BY MR. FLEMING:

13

14 Q. Do we have cameras set up inside the RHU mini law
15 library in Albion?

16 A. Inside the law library?

17 Q. Inside the mini law library, yes, of the RHU?

18 A. I do not know. I can't answer that question.

19 Q. You were the investigating captain, right; is that
20 correct?

21 A. Right.

22 Q. So you should be aware of every video and every
23 document that you review for investigation; is that correct?

24 A. We have almost two hundred cameras throughout the
25 facility --

1 Q. Let me redirect you back to the RHU mini law
2 library. So you are aware that there's cameras in there? Are
3 you aware of that?

4 A. Inside the library?

5 Q. Yes.

6 A. The way I read that question was that we set up --
7 I understood that question to say that we had set up cameras
8 inside the library, not --

9 Q. So you're --

10 A. -- Not fixed cameras.

11 Q. Are you saying that -- Yes or no, is there cameras
12 inside?

13 A. There are mounted cameras as part of the facility
14 security system.

15 Q. I'm going to ask you again, are there cameras
16 inside the RHU mini law library?

17 MR. MERICLI: Objection, asked and answered.

18 JUDGE BAXTER: He just answered the question.

19 Sustained.

20 MR. FLEMING: Your Honor, I'd like to have that
21 statement moved into evidence --

22 JUDGE BAXTER: It is in evidence, it's testimony
23 in evidence, sir.

24 MR. FLEMING: Okay. I don't have no -- I don't
25 have no further questions, your Honor, for this man.

1 JUDGE BAXTER: You may step down. Thank you very much,
2 Captain Weaver.

3 Call your next witness, Mr. Fleming.

4 MR. FLEMING: I'd like to have Officer Tiller,
5 Sergeant Tiller.

6

7 JOHN TILLER, first having been duly sworn,
8 testified as follows:

9

10 CLERK: Would you please state your full name and
11 spell your last name for the record?

12 THE WITNESS: John Leonard Tiller, T-I-L-L-E-R.

13

14 DIRECT EXAMINATION

15 BY MR. FLEMING:

16

17 Q. Good afternoon. Please, state your name again.

18 A. John Leonard Tiller.

19 Q. Thank you. How are you employed?

20 A. I'm a corrections counselor at SCI Albion.

21 Q. How long have you been employed there?

22 A. Six years in December.

23 Q. How long have you been involved in correction
24 counseling?

25 A. Corrections counseling just over a year.

1 Q. Overseeing prisoners?

2 A. Six years.

3 Q. Thank you. I want to direct your attention back
4 to May 14th, 2002. What were your duties that day with the
5 plaintiff?

6 A. I was assigned as a corrections officer one in
7 RHU, restricted housing unit.

8 Q. Can you describe -- What were your duties that
9 day, May the 14th, 2002 with the plaintiff, me, the plaintiff
10 in the courtroom?

11 A. I was assigned to escort you from your cell to the
12 RHU Law Library.

13 Q. Can you describe the operation?

14 A. Sure. I come to your cell, I open the wicker, I
15 handcuffed your hands. The camera operator was running the
16 camera. We opened the door. I escort you from the RHU cell
17 through the "B" pod door and into the RHU Law Library where I
18 uncuffed you.

19 Q. During the course of your duties that day, did you
20 come in contact with the plaintiff in the courtroom today?

21 A. (No audible answer.)

22 Q. Today? Did you come in contact with the plaintiff
23 in the courtroom today?

24 A. Yes.

25 Q. Can you describe how?

1 A. I just did. I escorted you from the RHU cell to
2 the RHU Law Library.

3 Q. Can you describe how you came into contact with
4 the plaintiff?

5 A. I opened your wicker. I handcuffed you. The cell
6 door was open. I escorted you from your RHU cell through the
7 "B" pod door into the RHU Law Library where I uncuffed you.

8 Q. By yourself?

9 A. With Officer Massey and Officer Sullivan running
10 the video camera.

11 Q. With no handcuffs on me?

12 A. I just said I handcuffed you.

13 Q. That's all you had on me? I was -- That's all,
14 you had handcuffs on me?

15 A. At the time, yes.

16 Q. Nothing else?

17 A. That's correct

18 Q. You don't remember having an object on you called
19 a tether?

20 A. Yes -- You're correct, there was a tether. That's
21 part of the RHU equipment. They are connected. So, yes,
22 there was a tether involved, you're correct.

23 Q. Thank you. Do you recall filling out a DC-121?

24 A. Yes.

25 Q. For what?

1 A. An allegation of abuse.

2 Q. You think you can explain that a little bit
3 better, please?

4 A. You accused me of kicking you and abusing you
5 while taking you to the RHU Law Library, and I filled out a
6 incident report stating to the fact that you had accused me of
7 that, yes.

8 Q. When did you -- Do you recall the date you filled
9 it out?

10 A. No, sir, I don't.

11 Q. When are these DC-121's suppose to be filled out
12 after a incident is reported?

13 A. As soon as possible.

14 MR. FLEMING: I'd like to move -- I'd like to
15 approach the witness, your Honor.

16 JUDGE BAXTER: What are you going to do?

17 MR. FLEMING: I have a DC-121 report to show this officer.

18 JUDGE BAXTER: You may.

19 MR. FLEMING: Thank you.

20 BY MR. FLEMING:

21 Q. Is that you right there (indicating)?

22 A. Yes, it is.

23 Q. You see the date on there?

24 A. Yes.

25 Q. Can you tell the Court the date?

1 A. May, 20th 2002.

2 Q. Can you tell the Court the date of the incident?

3 A. I believe that was May 14th.

4 MR. FLEMING: No further questions. I'd like to
5 have that moved into evidence.

6 JUDGE BAXTER: What is that, sir? Identify that
7 document.

8 MR. FLEMING: It's in Captain Weaver's
9 interrogatories and production.

10 JUDGE BAXTER: Captain Weaver's?

11 MR. FLEMING: Yeah. Can you hand that --

12 JUDGE BAXTER: Thank you, very much. So that is exhibit --

13 MR. MERICLI: "E".

14 JUDGE BAXTER: "E", thank you, Mr. Mericli. Let
15 the record reflect it was a page in Exhibit "E". All right.

16 MR. FLEMING: Thank you.

17 JUDGE BAXTER: Do you have any other questions?

18 MR. FLEMING: No.

19 JUDGE BAXTER: All right, Mr. Mericli?

20 MR. MERICLI: Thank you, your Honor.

21

22 CROSS-EXAMINATION

23 BY MR. MERICLI:

24

25 Q. Do you know why you didn't write this until six

1 days later?

2 A. I believe I had asked that day whether or not I
3 needed to write a report, and I was told I was not because the
4 entire incident was on videotape. And six days later when I
5 came back to work -- I was off in the meantime, I was -- I was
6 asked by Captain Weaver to file an incident report because of
7 the abuse allegations.

8 Q. Very good. Now, you understand that Mr. Fleming
9 has accused you in this lawsuit of maliciously and
10 sadistically trying to trip him and of having actually kicked
11 him in his right ankle, correct?

12 A. Yes, sir.

13 Q. What if anything do you have to say to the Court
14 about that accusation?

15 A. It's false, ma'am.

16 Q. After you took Mr. Fleming to the law library, who
17 uncuffed him?

18 A. I did, sir.

19 Q. What was Mr. Sullivan doing at the time?

20 A. He was running the video camera.

21 Q. When you uncuffed him, what if anything did you
22 see Mr. Sullivan do?

23 A. I didn't see Mr. Sullivan do anything, he was
24 behind me.

25 Q. Did you see him have any contact at all with the

1 wicker?

2 A. No, sir.

3 Q. Did you have any more contact with Mr. Fleming
4 that day after he was placed in the law library?

5 A. Yes, sir, we later escorted him from the RHU law
6 library to his cell.

7 Q. At some point did you exchange any words with him
8 while he was in the law library?

9 A. Yes, sir, I walked back past the RHU law library
10 to perform some of my other duties and he was in the RHU law
11 library. He said some comments to me. I'm not exactly sure
12 now what they were, and then he spit on the window directly in
13 front of my face.

14 I reported that to the sergeant, who reported to the
15 Lieutenant and decided to escort him back to the cell. And
16 when we did so, he made several other comments during the
17 escort, comments that he would spit on other officers, used a
18 bunch of vulgarities, and said he would spit on me as well.
19 He was escorted back to his cell without incident.

20 Q. Who was the sergeant?

21 A. That would be Sergeant Eddy, sir.

22 Q. He's now a Lieutenant I believe?

23 A. Yes, sir.

24 Q. What if anything did you do as a result of those
25 events?

1 A. I wrote him up for a misconduct, for assault on
2 me. There was one misconduct on three charges, assault, using
3 abusive language to an employee and threatening an employee
4 with bodily harm.

5 Q. Do you recall what the outcome of that misconduct
6 was?

7 A. No, sir, I don't.

8 Q. Do you have any reason to believe he was not found
9 guilty of that misconduct?

10 A. No, sir, I don't.

11 MR. MERICLI: I have no further questions, thank
12 you.

13 JUDGE BAXTER: Thank you.

14

15 REDIRECT EXAMINATION

16 BY MR. FLEMING:

17

18 Q. I'd like to redirect you back to the law library.
19 Before this spitting incident, before the -- before all this
20 occurred while you was taking me to the law library, you don't
21 recall doing anything to the plaintiff?

22 A. No.

23 MR. FLEMING: Your Honor, can I see my last --
24 last exhibit?

25 JUDGE BAXTER: Did you --

1 MR. FLEMING: The one with --

2 JUDGE BAXTER: Which one?

3 MR. FLEMING: The Inmate Abuse Allegation

4 Monitoring.

5 JUDGE BAXTER: You have it. I gave it back to him
6 and he handed it back to you.

7 MR. FLEMING: All right.

8 JUDGE BAXTER: That's a packet there that has been
9 marked Defendant's Exhibit "E". You can take a minute. It's
10 there somewhere.

11 MR. FLEMING: I think --

12 JUDGE BAXTER: It's actually a copy Mr. Mericli
13 gave him but not marked Exhibit "E".

14 MR. FLEMING: I think my exhibits are still up
15 there.

16 JUDGE BAXTER: Your exhibits are, but what you
17 handed me earlier to look at was not your exhibit.

18 MR. FLEMING: It's in there.

19 JUDGE BAXTER: In "E"?

20 MR. FLEMING: It's the last -- It's number nine.

21 JUDGE BAXTER: Number nine?

22 MR. FLEMING: Yeah.

23 JUDGE BAXTER: All right, that's not what I had in
24 my hand last time.

25 MR. FLEMING: Yeah, that's it.

1 JUDGE BAXTER: That's the procedures.

2 MR. FLEMING: Yeah, that's it.

3 JUDGE BAXTER: I'm sorry, I misunderstood you.

4 MR. FLEMING: Thank you.

5 BY MR. FLEMING:

6 Q. So you state that you walked by the Law Library
7 and as soon as I seen you I just ran and spit on the window?

8 A. No, you made some comment to me I was doing
9 something else at the time and you got my attention.

10 Q. As soon as I seen you I came and made the comment
11 and then spit on the window?

12 A. Correct.

13 Q. You did nothing to me to provoke me to act in that
14 manner?

15 A. Correct.

16 Q. I have a abuse allegation -- I have the DC-ADM
17 001. Are you familiar with that?

18 A. Yes.

19 Q. How many days did it take to you fill out a
20 DC-121?

21 A. I believe it was six days.

22 Q. And you're familiar with the DC-ADM 001?

23 A. Yes.

24 Q. I would like to read something to you. I'm going
25 to go to six, procedure. This is my exhibit, Exhibit 9, page

1 three. Page three, I'm going to read you the procedure on
2 page three, 6-C, "Reporting of Inmate Abuse Allegations All
3 Persons Who Are Employed by the Department. Any employee
4 receiving written or verbal notification from a inmate or
5 third party alleging an incident of abuse, or who is a witness
6 to an abuse, is required to complete a DC-121 part three,
7 Employee Report of Extraordinary Occurrence for submittal to
8 his/her supervisor and the facility's Grievance Coordinator.
9 All reports shall be completed prior to the completion of the
10 employee's duty shift."

11 I'd like to ask you, what was your justification for
12 taking, what was it, five days or six?

13 A. Six days.

14 Q. Six days for not filling out this report?

15 MR. MERICLI: Objection, argumentative. The witness has
16 already testified on that subject. JUDGE BAXTER:
17 In his direct questioning from Mr. Mericli he did testify
18 directly on that. If you want to make a point, you can say,
19 was it your testimony that? I'll allow that. Objection
20 overruled.

21 BY MR. FLEMING:

22 Q. Okay, I would like to make the point that before
23 this incident of spitting occurred that I was provoked by
24 being assaulted by this officer on my way to the law library

25 --

1 MR. MERICLI: Objection --

2 JUDGE BAXTER: You can't testify to that. You're
3 not on the stand to make that testimony. You can ask a
4 question of this witness, but you can't testify from the
5 counsel's chair.

6 MR. FLEMING: Okay.

7 BY MR. FLEMING:

8 Q. Who was your immediate superior?

9 A. Sergeant Eddy.

10 Q. Who was Sergeant Eddy's immediate superior?

11 A. I believe that day it was Lieutenant Morrow.

12 Q. Lieutenant Morrow?

13 A. I believe, yes.

14 Q. What was -- How long -- What was his shift hours?

15 A. My shift hours was six to two.

16 Q. Lieutenant Morrow's?

17 A. I'm not familiar with Lieutenant Morrow's daily
18 schedule. I couldn't tell you that day.

19 Q. So you don't know the time of day when you see him
20 when you come in and when you leave?

21 A. The RHU Lieutenant has gone through several
22 changes. I can't tell what his daily hours of operation
23 were at that time. I don't remember.

24 Q. When do you normally see him?

25 A. I saw him intermittently throughout the day.

1 Sometimes they work seven to three. Sometimes two to 10.
2 Sometimes eight to four. And it depends on the day. And it
3 depends on their schedule at the time.

4 I can't sit here and tell you what days he was working
5 and what times he was working that day.

6 Q. Can you tell me on the exact date of the incident
7 that you seen him?

8 A. No, I can't tell you exactly when I saw somebody,
9 when I see them. Sometimes one time a day, and sometimes 50
10 times a day. It varies every day.

11 MR. FLEMING: Your Honor, may I approach the
12 witness?

13 JUDGE BAXTER: For with a purpose?

14 MR. FLEMING: Of giving him a date, the exact date
15 that he seen Lieutenant Morrow come in, and the exact date --

16 JUDGE BAXTER: Are you going to show him a
17 document to refresh his recollection? You can approach the
18 witness. When you ask to approach, I don't know if you're
19 going to give him coffee or what, so that's why I ask.

20 MR. FLEMING: Okay, I got you.

21 BY MR. FLEMING:

22 Q. Can you review this and see if that's yours
23 (indicating)?

24 A. Yes, that's mine.

25 Q. I have here -- I have asked you a question, number

1 4-B --

2 MR. MERICLI: Your Honor, I'm going to object to
3 the relevance of this inquiry.

4 JUDGE BAXTER: Well, first of all, he's shown --
5 What document did you show him for the record, so the record's
6 reflecting what you showed him?

7 MR. FLEMING: I showed him this right here
8 (indicating).

9 JUDGE BAXTER: Yes, what is that?

10 MR. FLEMING: This is his interrogatories and
11 production.

12 JUDGE BAXTER: And you showed him the whole thing?

13 MR. FLEMING: Yeah.

14 JUDGE BAXTER: And you have a question on that?

15 MR. FLEMING: Yeah, yes.

16 JUDGE BAXTER: Do you now recall the date or the
17 time you saw Mr. Eddy, is that the question?

18 MR. FLEMING: Lieutenant Morrow.

19 JUDGE BAXTER: Lieutenant Morrow, I'm sorry.

20 CLERK: Is that document "J"?

21 JUDGE BAXTER: It's not a marked document.

22 CLERK: Is that Exhibit "J"?

23 JUDGE BAXTER: He doesn't have it marked.

24 MR. FLEMING: These are my documents. You don't have it
25 marked?

1 MR. MERICLI: I believe it's Exhibit "J".

2 JUDGE BAXTER: It is Exhibit "J"?

3 MR. MERICLI: Yes, and I would renew my objection,

4 your Honor, with all due respect. JUDGE BAXTER: Let's

5 ask you that question. There's an objection on the floor.

6 What is it? Where are you going with this? Why do you want

7 to know when he saw Mr. Morrow? Is it Morrow or Moore?

8 MR. MERICLI: Morrow.

9 JUDGE BAXTER: Morrow, all right.

10 MR. FLEMING: Because this is going to help me
11 establish that my actions was as a result of this officer
12 assaulting me by the -- because the lieutenants are immediate
13 superiors and they're the ones that get the information first.

14 And I can establish that not only was Lieutenant Morrow
15 there, but they also used Lieutenant -- Another Lieutenant,
16 Lieutenant Jones, to help concoct the story. This is the
17 second shift Lieutenant, Lieutenant Jones. Lieutenant Morrow
18 is the first shift Lieutenant. JUDGE BAXTER: You're

19 going to try to get testimony by showing that he talked to
20 Lieutenant Morrow at some point on the day of the 14th?

21 You're going to then go down the road where you're going to
22 try to extract testimony, where they concocted a story about
23 the incident? MR. FLEMING: With the second shift
24 Lieutenant, Lieutenant Jones.

25 JUDGE BAXTER: With Lieutenant Jones. I will give

1 you some leeway to ask those questions. Mr. Mericli, your
2 objection is overruled. But I'm putting a tight rein on you
3 on that one.

4 MR. FLEMING: All right.

5 JUDGE BAXTER: We're not going to spend the day
6 trying to get that testimony out of this witness.

7 MR. FLEMING: Okay.

8 BY MR. FLEMING:

9 Q. So you state here in your interrogatories of
10 production that Lieutenant Morrow was your immediate superior
11 and he was working from 06:00 hours to 14:00?

12 A. Okay.

13 Q. Is that correct?

14 A. If I wrote it down, yes, it's correct.

15 Q. It's under oath. So this was the only Lieutenant
16 that you came in contact with during that day?

17 A. He was the RHU Lieutenant assigned to my shift
18 that day, correct.

19 MR. FLEMING: Your Honor, may I approach the
20 witness to show that this officer was dealing with another
21 Lieutenant at the time of the spitting incident, a second
22 shift Lieutenant?

23 JUDGE BAXTER: You may. You may approach the
24 witness. Are you showing him the same document from
25 Defendant's Exhibit "J"?

1 MR. FLEMING: No, this is Captain Weaver's
2 interrogatory where everything, it's more detailed.

3 JUDGE BAXTER: We're back at "E"? Is that "E"? MR.

4 MERI CLI: I'm going to object, your Honor, he's trying to
5 impeach him with Lieutenant Jones's report. It's not his
6 report, and it doesn't have anything to do with anything he
7 wrote.

8 JUDGE BAXTER: But if the report reflects that he
9 spoke with him, that's what it will establish.

10 MR. MERICLI: Then I'm also --

11 JUDGE BAXTER: Is your objection hearsay or
12 relevance?

13 MR. MERICLI: My objection is first it is improper
14 impeachment. If it's going to be allowed in view of the
15 nature of --

16 JUDGE BAXTER: I don't think he's impeaching him.
17 I think he's still trying to get in this line of questioning.

18 MR. MERICLI: If he's trying to get in this line
19 of questioning with regard to Lieutenant Jones's opinion, then
20 my objection becomes relevance, because I don't think it has a
21 lot to do with anything.

22 JUDGE BAXTER: I will overrule the objections
23 both, first of all on improper impeachment because it's not
24 the Court's understanding you're trying to impeach him because
25 he only spoke to one lieutenant, if that's what you're trying

1 to do. Then we'll come to that, and that will be a renewed
2 objection.

3 The second objection I'm also overruling because I'm
4 giving you some leeway to go down this road. Relevance is
5 shaky at this point, so let's keep going.

6 MR. FLEMING: Okay

7 BY MR. FLEMING:

8 Q. I'd like to show you this DC-121 extraordinary
9 report (indicating). Can you explain to the Court whose
10 report that is?

11 A. This would be Lieutenant Dave Jones's report.

12 Q. Can you explain to the Court what shift this
13 officer assigned is?

14 A. Two to 10 RHU Lieutenant.

15 Q. Can you explain to the Court the time of the
16 spitting incident?

17 A. It says 13:25.

18 Q. That's one o'clock?

19 A. One twenty-five, yes.

20 Q. What time does that paper there say (indicating)?

21 A. That's what time it says.

22 Q. What time is second shift?

23 A. Two to 10, 14:00 to 22:00.

24 MR. FLEMING: No further questions. I'd like to
25 have that moved into evidence.

1 JUDGE BAXTER: It already is in evidence.

2 MR. FLEMING: All right.

3 JUDGE BAXTER: No further questions of this
4 witness? All right, Mr. Mericli?

5 MR. MERICLI: I have some brief questions.

6 JUDGE BAXTER: All right.

7

8 RECROSS-EXAMINATION

9 BY MR. MERICLI:

10

11 Q. Mr. Tiller, do you recognize that (indicating)?

12 A. Yes, sir.

13 Q. What is it?

14 A. That is the misconduct I wrote on inmate Fleming
15 for assault, for threatening an employee or their family with
16 bodily harm --

17 JUDGE BAXTER: You know, she is a miracle worker
18 as it is just getting down my speedy speech, but that was a
19 record there. That was really good. You'll have to slow
20 down.

21 A. Sure. And it's for using abusive, obscene or
22 inappropriate language to an employee.

23 Q. This is the misconduct you wrote on Fleming after
24 he spat on the window?

25 A. Yes, sir.

1 Q. What if anything did your decision to file this
2 misconduct have to do with the fact that Mr. Fleming had been
3 working on a civil rights complaint against Superintendent
4 Wolfe, Deputy Kormanic, Deputy Marquardt, Mr. Boeh, Mr.
5 Barnett, Mr. Skendall, Mr. Barr and Mr. McCarthy?

6 A. None, sir.

7 Q. Did you even know that he had been working on such
8 a document?

9 A. I knew he was working on legal material, that's
10 why we were taking him back to the RHU mini law library.
11 However, I didn't know what the matters were pertaining to.

12 Q. Did you know whether or not he had filed a suit in
13 court of the sort I just described on May 14th, 2002?

14 A. No, sir.

15 MR. MERICLI: I have no further questions.
16 Thank you, sir.

17 MR. FLEMING: So can I go back to the document --

18 JUDGE BAXTER: No, the way it works is now you can
19 only ask questions pertaining to the questions he just asked.

20 MR. FLEMING: All right.

21 JUDGE BAXTER: It keeps getting narrower and
22 narrower. That's so we don't spend three weeks here.

23 MR. FLEMING: All right.

24

25 FURTHER REDIRECT EXAMINATION

1 BY MR. FLEMING:

2

3 Q. So you said that you knew that I was doing some
4 type of legal work while he was taking me to the law library;
5 is that correct?

6 A. That's correct.

7 Q. But you didn't exactly know what kind of work it
8 was?

9 A. That's correct.

10 Q. But you knew that I was doing some legal work?

11 A. Correct.

12 MR. FLEMING: No further questions. JUDGE

13 BAXTER: Thank you. You are finished and so you're excused
14 from the witness stand. Thank you very much, Mr. Tiller.

15 THE WITNESS: Thank you.

16 JUDGE BAXTER: We're going to take a 15 minute
17 recess, morning recess, until 11:15 and we'll be back then and
18 you can call your next witness.

19 (At which time, 11:05 a.m., a recess was taken
20 and proceedings resumed at 11:20 a.m.)

21 JUDGE BAXTER: All right, you may call your next
22 witness, Mr. Fleming.

23 MR. FLEMING: Correction Officer Sullivan.

24

25 BOYD SULLIVAN, first having been duly sworn,

1 testified as follows:

2

3 CLERK: Would you please state your full name and
4 spell your last name for the record?

5 THE WITNESS: My name is Boyd A. Sullivan,
6 S-U-L-L-I-V-A-N.

7 JUDGE BAXTER: The water is good there if you'd
8 like some. I see you coughing.

9 THE WITNESS: Okay.

10

11 DIRECT EXAMINATION

12 BY MR. FLEMING:

13

14 Q. Good afternoon. Please, state your name once
15 more.

16 A. Boyd Sullivan.

17 Q. Thank you. How are you employed?

18 A. I'm a correctional officer at SCI Albion.

19 Q. How long?

20 A. It will be 10 years in December.

21 Q. I'm going to direct your attention back to May
22 15th. What were your duties that day with the plaintiff?

23 A. I was assigned to the RHU exercise team in the
24 RHU.

25 JUDGE BAXTER: May 14th, 2002?

1 MR. FLEMING: I'm sorry, May 14th, 2002.

2 A. I was assigned the RHU exercise team.

3 Q. Describe your duties with the plaintiff, please,
4 on that day with me?

5 A. I was the cameraman during the escort.

6 Q. Can you give a little more detail than that?

7 A. I was the cameraman during the escort with you
8 from your cell to the mini law library.

9 Q. What did you see during the course of you
10 operating the camera with me?

11 A. I saw you being escorted from your cell to the RHU
12 exercise -- or the mini law library.

13 Q. No incidents occurred?

14 A. I saw you trip on your way to the mini law
15 library.

16 Q. When we got to the law library can you continue to
17 explain what happened?

18 A. You were placed in the mini law library and as the
19 door was shut, the camera was shut off.

20 Q. So this -- This whole incident was suppose to be
21 recorded, was it?

22 A. Yes, it was.

23 Q. When did the camera shut off?

24 A. After you were placed in the RHU mini law library
25 the door was locked, the camera was then shut off.

1 Q. What do you mean you shut it off or why was it
2 shut off?

3 A. That's how I do it. When the door is shut, you
4 are placed in there, the door is shut, I shut the camera off.
5 You were videotaped outside of your cell.

6 Q. So when I got in, you're saying that you just --
7 that they shut the door with my handcuffs on?

8 A. Were your handcuffs still on?

9 Q. Yes.

10 A. Yes, they were.

11 Q. Can you explain what happened after that?

12 A. I don't understand.

13 Q. After my --

14 MR. FLEMING: Can I -- Your Honor, can I lead him
15 a little bit?

16 JUDGE BAXTER: Yes, you may lead the witness, he's
17 a hostile witness.

18 MR. FLEMING: Thank you.

19 Q. After I got inside the law library with my
20 handcuffs still on, what happened?

21 A. You backed up to the wicker to get your hands, you
22 know, to take your handcuffs off. That's when the camera was
23 shut off. That's when I shut it off.

24 Q. Is that the procedure?

25 A. That's how I do it, yes.

1 Q. Is that how the procedures tell you to do it?

2 A. It varies on the cameraman of how they do it. You
3 are to be videotaped outside of your cell.

4 Q. I just want to back up a little bit. You said my
5 handcuffs was still on; is that correct?

6 A. When you was in the mini law library?

7 Q. Yes.

8 A. Yes, they were.

9 Q. And you said once I get inside the law library the
10 procedure is that with my handcuffs still on I'm on a security
11 camera, that you just shut the camera off?

12 A. When you are escorted outside of your cell from
13 one room to the other you are videotaped, yes.

14 Q. I want to go back to the procedure of when I was
15 inside the law library.

16 A. Okay.

17 Q. With my handcuffs still on. You said the
18 procedure is cut the camera off before my handcuffs are
19 removed?

20 A. Once that door was shut and the door was locked
21 the camera was shut off.

22 Q. You didn't say anything before the camera shut
23 off?

24 A. Say anything meaning? What do you mean?

25 MR. MERICLI: I object to the form of the question.

1 JUDGE BAXTER: We've now been through it three
2 times. I know exactly what happened, because I've heard it
3 now three times. Let's move on. He said he shuts the camera
4 off once you're inside the room. He only tapes when you're
5 outside the room.

6 So you were inside the room and it was locked and it
7 was shut off and your cuffs were on. I've heard this, so move
8 on.

9 BY MR. FLEMING:

10 Q. So you don't recall doing anything, whether the
11 camera was shut off or not, you don't recall injuring me in
12 any way?

13 A. Mysel f i n juri ng you?

15 A. No.

16 MR. FLEMING: Your Honor, may I approach the
17 witness to show him an employee incident report? JUDGE
18 BAXTER: You may.

19 MR. FLEMING: This is off of Captain Weaver's
20 report.

21 JUDGE BAXTER: Captain Weaver's report.

22 CLERK: Keep your voice up because Mr. Mericli has
23 to hear you, too.

24 MR. FLEMING: All right.

25 JUDGE BAXTER: Captain Weaver's report. And Mr.

1 Mericli, what exhibit is that?

2 MR. MERICLI: Exhibit "E".

3 BY MR. FLEMING:

4 Q. Can you name the person who wrote that out?

5 A. C01 Sullivan.

6 Q. Can you state the time?

7 A. Zero nine fifty.

8 Q. I just want to go down on that report just a
9 little bit where it says that I begin spitting on the window.

10 Do you --

11 JUDGE BAXTER: Tell him where to start to read and
12 he'll read.

13 Q. Okay, I'll show you the question. Okay, I'll show
14 you right here (indicating). Start here, "After Fleming."

15 A. "After Fleming"?

16 Q. Yeah. Can you read it out loud?

17 A. It says, "After Fleming was placed in the law
18 library, he began spitting on the windows. Lieutenant D.
19 Jones informed Sergeant Eddy to remove Fleming from the law
20 library, and he was escorted back to his cell without
21 incident."

22 Q. Thank you. Who was your immediate superior that
23 day?

24 A. Sergeant Eddy.

25 Q. Who was Sergeant Eddy's immediate superior?

1 A. Lieutenant Morrow.

2 Q. What shift does Lieutenant Morrow work?

3 A. Six to two.

4 Q. Here it says -- Here I have where it says
5 Lieutenant Jones informed Sergeant Eddy to remove Fleming from
6 the Law Library?

7 A. Yes.

8 Q. Is that -- Did you write that?

9 A. Yes.

10 Q. What shift does Lieutenant Jones work?

11 A. He works --

12 MR. MERICLI: Objection, relevance. JUDGE

13 BAXTER: Why does it matter?

14 MR. FLEMING: Because I want -- I'm trying to
15 establish a foundation that these reports are concocted by
16 officers on another shift, and it's in regards to the wicker
17 incident, the spitting incident.

18 JUDGE BAXTER: But see, the fact -- If he
19 testifies that Lieutenant Jones informed someone to remove
20 you, how does that say it was concocted?

21 MR. FLEMING: Due to the fact that the second
22 shift Lieutenant Jones, during --

23 JUDGE BAXTER: Could he have been there by then?
24 Are you saying he wasn't there?

25 MR. FLEMING: It's impossible for him to have been

1 there, your Honor.

2 JUDGE BAXTER: Why? You don't go to work early?

3 MR. FLEMING: Excuse me?

4 JUDGE BAXTER: He can't go to work early?

5 MR. FLEMING: He can go to work early, yeah. JUDGE

6 BAXTER: I'm trying to see how that's going to prove your

7 point.

8 MR. FLEMING: Because it's going to lead me to the
9 incident that I made as to this defendant or this officer
10 assaulting me. All this happened in the same -- JUDGE
11 BAXTER: I don't follow. I'm going to overrule the objection
12 for this reason, because he is trying to I think impeach the
13 witness who wrote down Lieutenant Jones, and he's trying to
14 say that Lieutenant Jones was not the man there. So for that
15 reason I'll allow it.

16 But the point you say you're trying to make is actually
17 lost on me. Go ahead.

18 MR. FLEMING: All right.

19 BY MR. FLEMING:

20 Q. I would like to present another exhibit which is
21 Exhibit 10 of the law library tape with the medical exam. I'd
22 like to show that now.

23 JUDGE BAXTER: Show the tape. Okay, this is
24 Plaintiff Exhibit Number 10 which is a videotape. Let the
25 record reflect it's a videotape dated 5-14-02 entitled "Escort

1 to law library and exam in medical triage."

2 Which part do you want to show? The whole thing?

3 MR. FLEMING: Right now I just want to show the first
4 segment of the law library incident.

5 JUDGE BAXTER: Okay. Do you have a question then
6 for the witness?

7 MR. FLEMING: Yes, I do.

8 JUDGE BAXTER: All right.

9 MR. FLEMING: Can you hold on before you show
10 that?

11 BY MR. FLEMING:

12 Q. So you said that your procedure is that you shut
13 the video off once I got inside the law library?

14 A. Yes.

15 Q. You did it on your own will? On your own will you
16 shut it down?

17 A. Yes, I reached up and shut it off, yes.

18 Q. It never stopped on the -- I was never --

19 JUDGE BAXTER: You can't testify. You can only ask him a
20 question. All right.

21 MR. FLEMING: Right now I want to show the video.

22 JUDGE BAXTER: Fine. Can you see it there on your
23 screen?

24 THE WITNESS: Yes.

25 JUDGE BAXTER: Okay.

1 (At which time, the videotape was played.)

2 JUDGE BAXTER: Do you want to keep going?

3 MR. FLEMING: I want to you stop it at a certain point, but I
4 think I missed it.

5 JUDGE BAXTER: Do you want it shown again?

6 MR. FLEMING: Just a little bit. Show it -- There's a certain
7 point I want to stop at this time.

8 JUDGE BAXTER: Can you pause it without going to

9 --

10 CLERK: No.

11 (At which time, the videotape was played.)

12 MR. FLEMING: Stop. Thank you.

13 BY MR. FLEMING:

14 Q. Did you just see that tape?

15 A. Yes, I did.

16 Q. Did you hear that last statement?

17 A. (No audible answer.)

18 Q. Can you rewind it one more time?

19 MR. MERICLI: He's asking if you could hear
20 yourself speaking on the tape?

21 THE WITNESS: Yes. Yes, I do.

22 Q. Yeah, that's cool. What did you say?

23 A. I said I would have got it on tape but the battery
24 went dead.

25 MR. FLEMING: I have no further questions for this

1 CO, your Honor, and I'd like to have that moved into evidence.

2 JUDGE BAXTER: It is in evidence. Thank you.

3 MR. FLEMING: Thank you.

4 JUDGE BAXTER: Mr. Mericli?

5

6 CROSS-EXAMINATION

7 BY MR. MERICLI:

8

9 Q. Why was Mr. Fleming on video restriction; if you
10 know?

11 A. I don't know the main reason, but generally you're
12 put on the camera because you've become a problem inmate in
13 the RHU a numerous amount of times. It's not a common
14 practice just to be on video just for the sake of being on it.

15 Q. How unusual is it?

16 A. There could be -- Well, generally we have 100
17 inmates in the RHU and of those 100 we might have one or two
18 that's on the camera. Sometimes you might go weeks or months
19 and nobody would be placed on that camera.

20 Q. Did you think that Corrections Officer Tiller had
21 kicked Mr. Fleming?

22 A. Do I think he did kick him?

23 Q. Did you think that at the time?

24 A. No.

25 Q. Why not?

1 A. Because there's no -- He's standing off to the
2 side of him. There's no, you know.

3 Q. Were you looking?

4 A. No, I was looking in the camera.

5 Q. Did you -- Were you able to observe the movement
6 when he was taken out of his cell and moved into the direction
7 of the law library while were you taping?

8 A. It -- I could only see from like his waist or like
9 the back of his legs up. Like I say, I was looking through
10 the camera eyepiece, so whatever I saw --

11 Q. You've seen the tape here?

12 A. Yes.

13 Q. Does it show Mr. Tiller kicking him?

14 A. No, it doesn't.

15 Q. Did you see Mr. Tiller kick him?

16 A. I didn't see him kick him, no.

17 Q. Do you believe he did?

18 A. No, I don't believe he did kick him.

19 Q. Why did you say the battery had gone dead?

20 A. No reason really, I just --

21 Q. Teasing him?

22 A. Yeah, I guess, for worst -- lack of term, just
23 being silly I guess.

24 Q. Why is it your practice to stop the taping before
25 you uncuff at the library?

1 A. It's -- He's to be videotaped outside of his cell,
2 outside of his cell and during movement from point "A" to
3 point "B".

4 Q. So then the movement as you see it had ended once
5 he went inside?

6 A. Yes, he was behind a secured locked door and
7 that's when I physically reached up and shut the videotape
8 off.

9 Q. Who uncuffed him?

10 A. I believe it was Sergeant Tiller.

11 Q. It's been intimated that Mr. Fleming accuses you
12 of kicking the pie slot or the wicker shut on his wrist. Did
13 you do that?

14 A. No.

15 Q. What would have that required for you to do that?

16 A. I had the camera. It would have required me of
17 stepping in between Officer Tiller and Officer Massey, getting
18 in between them and swinging at the wicker with, you know, my
19 foot and kicking it.

20 Q. Did you do that?

21 A. No.

22 MR. MERICLI: I don't have any more questions,
23 your Honor. Thank you.

24 JUDGE BAXTER: Thank you. Mr. Fleming?

25

1 DIRECT EXAMINATION

2 BY MR. FLEMING:

3

4 Q. I'd like to redirect you back to your view of
5 operating the video camera. When you -- So you didn't see as
6 Tiller -- as I stated, kicked me or tripped me? All you --
7 What -- What part could you see?

8 A. I could see you from like your waist area up. I
9 saw you limping, you know, limping.

10 Q. So what about from the waist down?

11 A. I couldn't see it. Like I said, I had the
12 eyepiece up and I was videotaping you from roughly around your
13 waist area up.

14 Q. So you didn't -- So you didn't see none of it?

15 A. None of what?

16 Q. What I claimed of me being assaulted by Officer
17 Tiller?

18 A. No.

19 Q. Okay. I'd like to redirect you to you said in
20 order for you to be able to get your foot up to the wicker
21 slot you had to step between officers?

22 A. Yeah.

23 Q. Okay. Where were the officers at?

24 A. (No audible answer.)

25 Q. You know, was they on your left or was they on

1 your right?

2 A. They were on the right.

3 Q. On your right?

4 A. On my right.

5 Q. So were you on the left; is that correct?

6 A. (No audible answer.)

7 Q. What side were you on?

8 A. I was at the side of the door with the video
9 camera.

10 Q. What side, left or right?

11 A. It depends. If you're facing the door, I was on
12 the left.

13 Q. Okay. That's when you shut the video off?

14 A. Yes, when you were secured behind the door and the
15 door was locked, the video was shut off.

16 Q. So the battery never ran out?

17 A. No.

18 MR. FLEMING: No further questions.

19

20 RECROSS-EXAMINATION

21 BY MR. MERICLE:

22

23 Q. You've emphasized today that when you were looking
24 through the eyepiece of the video camera you were focusing on
25 the upper part of Mr. Fleming's body, right?

1 A. Yes, sir.

2 Q. But you're not attempting to testify about what
3 the camera may or may not have shown or picked up when you say
4 that, right?

5 A. Right, I -- Like I said, I'm looking at whatever
6 is through the eyepiece.

7 Q. So you're testifying to your recollection when you
8 look through the eyepiece, you're not testifying of what
9 appears on the videotape? What appears on the videotape
10 speaks for itself, right?

11 A. Yes, sir.

12 MR. MERICLI: Thank you.

13 JUDGE BAXTER: All right, you may step down.
14 Thank you very much.

15 You may call your next witness.

16 MR. FLEMING: Sergeant Eddy.

17 JUDGE BAXTER: Sergeant Eddy, would you please
18 step up to the witness stand?

19 MR. MERICLI: May it please the Court, it's
20 Lieutenant Eddy.

21 JUDGE BAXTER: Lieutenant Eddy, I'm sorry.

22 THE WITNESS: That's okay.

23 MR. FLEMING: Mr. Lieutenant Eddy.

24

25 D A V I D E D D Y, first having been duly sworn,

1 testified as follows:

2

3 CLERK: Would you please state your full name and
4 spell your last name for the record?

5 THE WITNESS: David John Eddy. Last name spelled,
6 E-D-D-Y.

7

8 **DIRECT EXAMINATION**

9 BY MR. FLEMING:

10

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Please, state your name again.

14 A. David John Eddy.

15 Q. Thank you. How are you employed?

16 A. I'm a Lieutenant for the Department of Corrections
17 at SCI Albion.

18 Q. How long have you been a Lieutenant?

19 A. Two years now.

20 Q. How long have you been involved in correction, of
21 a institution employment?

22 A. Eleven years this March.

23 Q. I want to direct your attention back to May 14th,
24 2002 and the incident with the plaintiff here in the courtroom
25 today. Can you give some details on what happened?

1 A. Could you shed light on which incident you're
2 referring to?

3 Q. With the law library incident. Do you recall --

4 A. Yes, I recall that incident. Approximately --

5 Q. Can you -- Can you give details on it?

6 A. Yes, sir.

7 Q. Thank you.

8 A. Approximately 13:00 I was about to enter bravo
9 pod, the pod that you lived on. I had hit the call button to
10 get onto the pod and I had to wait for the control officer let
11 me in. At that time I observed through the door pane window
12 you being escorted by Officer Tiller, Officer Massey, and
13 Officer Sullivan was on video camera.

14 In that process you tripped yourself up. And they then
15 escorted you to the door. And I opened the door, pushed the
16 door open for them and you stated to me, do you see what your
17 officers done? And I said the only thing I seen was you
18 tripped yourself up and if you keep it up, you'll go back to
19 your cell.

20 Q. I have a DC-121 report right here from you dated
21 May 15th (indicating)?

22 A. Correct.

23 CLERK: Sir, what exhibit is that from?

24 MR. FLEMING: From Captain Weaver's. JUDGE BAXTER:
25 Defendant's Exhibit "E".

1 Q. Did you witness anything in reference to me going
2 inside the law library?

3 A. No, once you -- once you -- the officers escorted
4 you past me, I went onto bravo pod and continued with my tour
5 of the unit.

6 Q. So are you saying you just left?

7 A. No, I'm saying I continued on with my duties and
8 they continued on with theirs, escorting you to the law
9 library.

10 Q. Explain your duties.

11 A. I'm -- At that point I was restricted housing unit
12 sergeant, we conduct tours of the unit, we help with escorts
13 when need be, and basically whatever the RHU Lieutenant
14 instructs you to do for the day. Counts, yard exercise lists,
15 various aspects of that.

16 Q. You said you conduct escorts?

17 A. On some occasions, yes.

18 Q. What -- What would you call me going from my cell
19 to the law library on camera?

20 A. An escort.

21 Q. And you weren't present?

22 A. For that escort?

23 Q. Yes.

24 A. I was -- No, I was not partaking in that escort, I
25 was doing my tour of the unit.

1 Q. You said -- You said this entails conducting
2 escorts --

3 MR. MERICLI: Objection, argumentative.

4 JUDGE BAXTER: Move on. That doesn't make any difference. He
5 says he wasn't part of it. He says he ran into you, talked to
6 you and then he moved on to other things. Move on.

7 MR. FLEMING: Okay.

8 BY MR. FLEMING:

9 Q. So you say that you witnessed me fooling around?

10 A. Correct.

11 Q. And I tripped myself?

12 A. Correct.

13 MR. FLEMING: I'd like to present this video and
14 show --

15 JUDGE BAXTER: All right, let's play the video
16 again. If you want to stop it at a certain place, make sure
17 you tell Mrs. Wallen.

18 MR. FLEMING: All right.

19 (At which time, the videotape was played.)

20 Q. Did you see that?

21 A. Yes, I did.

22 Q. From that point there, where did you go?

23 A. On to bravo pod continuing my tour of the unit.

24 Q. When did you talk to me?

25 A. As you were coming outside the door.

1 MR. FLEMING: Would you rewind that, please? Can
2 you show me -- Can you stop the tape where were you talking to
3 me at --

4 JUDGE BAXTER: What's your point? What's your
5 point? What do you care? What's your point?

6 MR. FLEMING: My point is this officer is
7 committing perjury on the stand.

8 JUDGE BAXTER: That he didn't talk to you, is that
9 what you're saying?

10 MR. FLEMING: Yes, I am. This is -- JUDGE
11 BAXTER: So your point is simply that he's lying on the stand
12 about that?

13 MR. FLEMING: Yes, I am.

14 JUDGE BAXTER: There's no other point you want to
15 make about that for your case?

16 MR. FLEMING: No, I don't.

17 JUDGE BAXTER: Show it one more time.

18 (At which time, the videotape was played.)

19 JUDGE BAXTER: All right.

20 MR. FLEMING: No further questions. JUDGE
21 BAXTER: Mr. Mericli?

22

23 CROSS-EXAMINATION

24 BY MR. MERICLI:

25

1 Q. How unusual is it for shift lieutenants on the RHU
2 to overlap their shifts?

3 A. It happens everyday. The six to two lieutenant
4 works and the one to nine lieutenant comes in.

5 Q. Are you sure you said quit fooling around --

6 A. I seen it on the video when they opened the door.
7 I didn't scream it at him. It was a normal voice, quit
8 fooling around or you'll be back to your cell. And you could
9 see he turned around to look at me and you could see my lips
10 moving.

11 Q. Anything further, sir?

12 A. That's all I have.

13 MR. MERICLI: Thank you, no further questions.

14 JUDGE BAXTER: Anything else on redirect? MR.
15 FLEMING: No.

16 JUDGE BAXTER: Thank you, you may step down. Any
17 other witnesses?

18 MR. FLEMING: Can I ask a question? JUDGE
19 BAXTER: Yes, sir.

20 MR. FLEMING: Because it's been a long time, who
21 is that guy there (indicating) with the black shirt on?

22 MR. MERICLI: You can't ask.

23 JUDGE BAXTER: Call your next witness.

24 MR. FLEMING: That's what I mean.

25 MR. MERICLI: Just use a name.

1 JUDGE BAXTER: Just call a name. If he's here,
2 we'll bring him up.

3 MR. FLEMING: Oh, I know who it is. I'd like to
4 call Mal donado, CO Mal donado.

5 MR. MERICLI: May it please the Court, it's
6 Mal donado.

7

8 J O S E M A L D O N A D O, first having been duly
9 sworn, testified as follows:

10

11 CLERK: Would you please state your full name and
12 spell your last name for the record?

13 THE WITNESS: Jose R. Mal donado,
14 M-A-L-D-O-N-A-D-O.

15

16 **DIRECT EXAMINATION**

17 BY MR. FLEMING:

18

19 Q. Good afternoon.

20 A. Good morning.

21 Q. Please state your name once more.

22 A. Jose R. Mal donado.

23 Q. Thank you. How are you employed?

24 A. I'm a corrections officer, Department of
25 Corrections with SCI Albion.

1 Q. How long?

2 A. Five years and eight months.

3 Q. Okay. I want to direct your attention to August

4 2nd and --

5 JUDGE BAXTER: 2002?

6 MR. FLEMING: Yes, 2002. Can I give him the
7 details?

8 JUDGE BAXTER: You can lead the witness.

9 MR. FLEMING: All right.

10 Q. With the misconduct for --

11 JUDGE BAXTER: Mr. Maldonado is a defendant?

12 MR. MERICLI: Yes.

13 JUDGE BAXTER: You can lead the witness.

14 BY MR. FLEMING:

15 Q. With the misconduct of breaking a cuff key, are
16 you aware of that?

17 A. I --

18 Q. You said I broke a cuff key, along with Officer
19 Davison.

20 JUDGE BAXTER: Do you recall that incident, Mr.
21 Maldonado?

22 THE WITNESS: Not clearly. I remember something
23 happened but I can't remember clearly what.

24 MR. FLEMING: Your Honor, could you please give me
25 Exhibit 3 so I can --

1 JUDGE BAXTER: Yes, sir, I will.

2 MR. FLEMING: Thank you.

3 Q. (Indicating). You can look at the front of it to
4 refresh your memory. It's another one, too. I think it's
5 Exhibit 4 that I'm going to be coming to shortly.

6 Are you aware of that?

7 A. I remember it.

8 Q. Okay. You were the one that was on camera. Was
9 that on camera?

10 A. I don't believe it was on camera.

11 Q. So you're saying it wasn't on camera?

12 A. I don't remember. I don't think so.

13 Q. All right. Put that -- There's another one up
14 there, you can put that aside. I want to come back to that.
15 The August 23rd incident --

16 JUDGE BAXTER: Let the record reflect that the
17 witness has Plaintiff Exhibit Number 4.

18 Q. Are you aware of that? Was that --

19 A. Yes.

20 Q. -- Was that on camera?

21 A. That was one I remember clearly because I was the
22 one running the camera.

23 Q. But the August 2nd one, that wasn't on camera?

24 A. I can't remember that one.

25 Q. Okay. Can you explain the August 2nd one, the one

1 that you wasn't aware that was on camera?

2 MR. MERICLI: Objection to the form of the
3 question

4 JUDGE BAXTER: What are you asking him? To tell
5 about the incident on August 2nd, 2002?

6 MR. FLEMING: Yes.

7 JUDGE BAXTER: Overruled.

8 Q. Can you tell about the incident?

9 A. Well, I can remember that, that we handcuffed you.
10 I can't remember if we were going -- you were going to the
11 shower or the yard, but you started acting up. And we both
12 grabbed hold of the tether and as I put my handcuff key -- my
13 handcuff key to uncuff you, you pulled in and that's when you
14 broke the handcuff key.

15 Q. Can I see that number 3 once? Thanks. You said I
16 broke the handcuff key as you was taking it off?

17 A. I believe that's how it happened.

18 Q. Okay. So you uncuffed me and took them off,
19 right?

20 A. I tried to. You broke the key and I can't really
21 tell you if you kept the handcuffs on or I had them. I can't
22 remember clearly that. Like I said, I just remember part of
23 it.

24 Q. You just remember that you uncuffed me?

25 A. Yeah.

1 Q. You sure you uncuffed me?

2 A. Yeah, I believe because it was my handcuff key.

3 MR. FLEMING: Your Honor, I'd like to show this
4 officer this misconduct (indicating).

5 JUDGE BAXTER: Go ahead.

6 Q. That the officer that uncuffed me was not this
7 officer, it was Officer Davison. Can you read that to the
8 Court, please? That there (indicating).

9 A. "On the above date and time while uncuffing inmate
10 Fleming (EM 7566) in his cell, inmate Fleming tried to pull
11 the handcuffs into his cell. This officer along with CO1
12 Maldonado grabbed the tether and inmate Fleming was unable to
13 get the cuffs. However, Officer Maldonado's key was broken
14 from inmate Fleming's actions."

15 Q. Who is the reporting officer?

16 A. The reporting officer was Officer Davison.

17 Q. Who was involved in the incident?

18 A. Officer Davison and myself.

19 MR. FLEMING: No further questions.

20

21 CROSS-EXAMINATION

22 BY MR. MERICLE:

23

24 Q. Whose key does Davison say was broken in the
25 report?

1 A. Officer Maldonado.

2 Q. That's you?

3 A. Yes, sir.

4 Q. And that's just what you testified to as well?

5 A. Yes, sir.

6 Q. Okay. Did you recently have an occasion to view a
7 videotape of an incident in which you and Officer Davison was
8 again teamed to escort Mr. Fleming to the RHU exercise yard at
9 Albion?

10 A. Yes, sir.

11 Q. Okay. Do you remember what happened on that
12 occasion?

13 A. Well, we got to -- I was the videotaping Officer
14 -- Officer Harmon and Officer Davison were doing an escort.
15 We got him cuffed, went to the yard and we opened the gate,
16 the yard gate. And he turned around, he pulled the tether out
17 of Davison's hands, turned around and kicked the gate.

18 Q. That's what the video will show if the Court --
19 when the Court has an occasion to look at it?

20 A. Yes. Yes, sir.

21 Q. Okay. Was a misconduct written on that?

22 A. Yes.

23 Q. You didn't write it though, did you?

24 A. No, I believe it was Officer Davison because he's
25 -- The gate hit him in the hand.

1 Q. Now you appeared as the witness on this misconduct
2 involving the broken cuff key, correct?

3 A. Yes, sir.

4 Q. Do you know whether you were listed as a witness
5 on the assault on corrections Officer Davison or not?

6 A. I believe I was.

7 Q. Is there any truth to the assertion that's been
8 made by Mr. Fleming that Mr. Davison slammed the gate into his
9 elbow?

10 A. No, he didn't slam the gate.

11 Q. In fact it was the other way around, he kicked the
12 gate onto Davison's hand?

13 A. He kicked the gate.

14 Q. Did you know at the time that event happened that
15 he had filed suit against a group of SCI Albion's -- and I'm
16 going to call them higher ups, top brass, three months
17 earlier?

18 A. No, sir.

19 Q. Did that play any role in either occasion? Did
20 you discuss that with Davison in either event?

21 A. No, sir because I didn't know. I didn't know he
22 was doing that.

23 Q. Davison didn't talk to you about it?

24 A. No.

25 Q. Do you have any reason to think that Davison knew

1 about it?

2 A. I can't tell you about him. He never talked to
3 me.

4 Q. But you had no reason to know -- He didn't give
5 you any indication?

6 A. No, he didn't.

7 MR. MERICLI: No further questions. Thank you,
8 sir.

9 MR. FLEMING: May I see that August -- JUDGE
10 BAXTER: Exhibit 3 or 4?

11 MR. FLEMING: Exhibit 3 again, please. Thank you.

12

13 REDIRECT EXAMINATION

14 BY MR. FLEMING:

15

16 Q. So this here -- This Exhibit 3 here was no
17 videotape of this incident?

18 A. That's the one with the handcuff key?

19 Q. Yes.

20 A. Like I said before --

21 Q. No videotape?

22 A. Like I said before --

23 Q. So you saying I was out my cell without being on
24 video camera?

25 A. No, I didn't say you were out of your cell. I

1 never said that. I said we went to your cell, we handcuffed
2 you. I don't know if we were going to the yard or to the
3 shower. You started acting up, and that's when we decided to
4 take the handcuffs off, and that's when I put the cuff key in
5 and you pulled away and broke my cuff key.

6 Q. Okay. So you didn't give no report of that
7 incident, did you?

8 A. I don't remember, I can't remember.

9 MR. FLEMING: No further questions. JUDGE
10 BAXTER: Thank you, you may step down Officer Mal donado.

11 THE WI TNESS: Thank you.

12 JUDGE BAXTER: Next witness.

13 MR. FLEMING: I'd like to call Captain Robinson to
14 the stand.

15 JUDGE BAXTER: Is it Robertson or Robinson?

16 THE WI TNESS: Robinson.

17

18 T H E O D O R E R O B I N S O N, first having been
19 duly sworn, testified as follows:

20

21 CLERK: would you please state your full name and
22 spell your last name for the record?

23 THE WI TNESS: Theodore W. Robinson, III,
24 R-O-B-I-N-S-O-N.

25

1 DIRECT EXAMINATION

2 BY MR. FLEMING:

3

4 Q. Good afternoon. Please state your name one more
5 time.

6 A. Theodore W. Robinson, III.

7 Q. How are you employed?

8 A. I'm a Lieutenant with the Department of
9 Corrections at SCI Albion.

10 Q. How long?

11 A. January it will be 12 years.

12 Q. I'd like to direct your attention to August 23rd,
13 2002. Can you give some details of this incident with
14 Maldonado and Davison for a assault you investigated and gave
15 me a misconduct for lying?

16 A. You're referring to the grievance?

17 Q. Or the grievance. Misconduct or grievance.

18 A. Okay. You had filed a grievance stating that you
19 had been assaulted. Mr. Barr, the Superintendent, as the
20 grievance coordinator, assigned me the duties of following up
21 on that grievance. As a matter of investigating that
22 grievance, I reviewed the tape, I discussed with the security
23 office the best way to approach it. I also talked to the
24 staff involved, and also talked to you.

25 Q. So this incident is videotaped?

1 A. Yes, there was a videotape.

2 Q. And everything in your report is true?

3 A. Everything is true.

4 MR. FLEMING: Can you put this video in, please?

5 JUDGE BAXTER: Is that "B"?

6 MR. MERICLI: Yes, your Honor.

7 MR. FLEMING: This is the second one.

8 MR. MERICLI: Yes.

9 (At which time, the videotape was played.)

10 MR. FLEMING: Can I get Exhibit 5, please?

11 JUDGE BAXTER: Exhibit 5?

12 MR. FLEMING: Yeah. Thank you.

13 BY MR. FLEMING:

14 Q. Okay, I have here the misconduct that you gave me where you state that "In the course of the factfinding it was discovered by observing a videotape of the said incident that inmate Fleming knowingly lied in his grievance. The videotape clearly shows inmate Fleming entering the RHU yard pen, turning and then kicking the gate shut with his right foot, thus assaulting the officer. Fleming clearly knew he had kicked the gate and that an officer had not assaulted him."

15 Can you state that's your writing?

16 A. That would be correct.

17 Q. Okay. So did you see the gate shut on -- Did you

18 see the gate fully once I got inside the yard through the

1 camera?

2 A. Can you say that again?

3 Q. Did you see -- Did you see the gate, the area
4 fully, the area as you walking inside, as you walking inside
5 the gate, before you turn, did you --

6 A. You can see the gate.

7 JUDGE BAXTER: Are you saying this gentleman was
8 there?

9 MR. FLEMING: No, he was investigating.

10 JUDGE BAXTER: All right, so you're talking about on the
11 screen did he see it?

12 MR. FLEMING: Right.

13 MR. MERICLI: Your Honor, I would object. I think
14 the tape speaks for itself.

15 JUDGE BAXTER: The tape speaks for itself, yes.

16 Sustained. Go on.

17 MR. FLEMING: So I got to keep going? Can't go
18 back to that?

19 JUDGE BAXTER: Keep going.

20 BY MR. FLEMING:

21 Q. So what you saying you seen -- Are you saying you
22 seen the assault and I turned and kicked the gate, right?

23 A. No, I did see an assault. You assaulted by
24 kicking door and hitting the officer in the arm.

25 Q. Did you actually see the door hit the officer in

1 the arm?

2 A. Yes, I did.

3 MR. FLEMING: Can you rewind the tape again,
4 please? I'll let you know when to stop.

5 (At which time, the videotape was played.)

6 MR. FLEMING: Stop. Thank you.

7 Q. Did you just see that?

8 A. Yes, I did.

9 Q. Was the officer hit in the arm?

10 A. Yes, he was.

11 JUDGE BAXTER: All right that's the last time you
12 ask that question. He's answered it twice. You can disagree
13 with him, but you can't keep going over and over it. Let's
14 move on.

15 MR. FLEMING: All right, I'll move on.

16 Q. All right. So you gave me a misconduct for lying
17 to an employee. Was there any medical reports or anything
18 filled out for this officer arm being hurt?

19 A. I do not know.

20 Q. Well, how did you know his arm was hurt?

21 A. By observing the tape.

22 JUDGE BAXTER: What was the misconduct for?

23 THE WITNESS: Lying.

24 MR. FLEMING: Lying to an employee. JUDGE
25 BAXTER: Go ahead.

1 Q. So you saying that you knew the officer's arm was
2 hurt just by looking at the tape?

3 MR. MERICLI: Your Honor, I'm going to object. I
4 think this is irrelevant. He wrote him up for lying about the
5 incident. He didn't write him up for an assault.

6 JUDGE BAXTER: Sustained. Move on.

7 MR. FLEMING: Okay.

8 JUDGE BAXTER: I've given you a lot of leeway this
9 morning, but my hair is getting grayer as we go along. Move
10 along.

11 Q. In your investigation reports of this incident
12 right here -- In your investigation report of this incidents
13 right here you state that Fleming -- that Fleming knew --
14 Fleming kicked the gate and that the officer had not assaulted
15 him. You did see me kick the gate?

16 A. Yes, I saw you kick the gate.

17 Q. But you didn't know -- But you didn't know why I
18 kick it, you just seen me kick it?

19 A. I know that the officers did not do anything on
20 the tape. I also saw you kick the gate. Therefore, you knew
21 that you did not get assaulted by the officers.

22 Q. Did you read the grievance?

23 A. Yes, I read the grievance.

24 Q. Can you explain to the Court what the grievance
25 said?

1 A. The grievance reported that you had been assaulted
2 by Officer Davison.

3 Q. And that's it?

4 A. That's all I recall at this time.

5 MR. FLEMING: All right, no further questions.

6 MR. MERICLI: Thank you. I have no questions of the
7 witness.

8 JUDGE BAXTER: You may step down, Officer
9 Robinson, thank you.

10 THE WITNESS: Thank you.

11 JUDGE BAXTER: Next witness, Mr. Fleming. We're
12 going to go for 10 more minutes before a lunch.

13 MR. FLEMING: I can get one more? JUDGE
14 BAXTER: Yes.

15 MR. FLEMING: I'm going to go to go with -- Do you
16 feel you're on Price is Right? Mr. Klos, come on down.

17

18 D O N A L D K L O S, first having been duly sworn,
19 testified as follows:

20

21 CLERK: Would you please state your full name and
22 spell last name for the record?

23 THE WITNESS: Donald J. Klos, K-L-O-S.

24 JUDGE BAXTER: A-S?

25 THE WITNESS: O-S.

1 MR. FLEMING: Okay, that's good enough for me.

2 Excuse me.

3

4 DIRECT EXAMINATION

5 BY MR. FLEMING:

6

7 Q. I'd like to direct your attention to -- First of
8 all, how are you employed?

9 A. I'm employed as a registered nurse in the
10 infirmary at SCI Albion.

11 Q. How long have you been a registered nurse?

12 A. About 16 years.

13 Q. I want to direct your attention to May 14th, 2002
14 and your medical examination of the incident prior to. Can
15 you give some details on that?

16 A. I need some type of documentation. I haven't seen
17 anything since 2002.

18 MR. FLEMING: Can I give it to him? JUDGE
19 BAXTER: Yes, you may approach the witness with an exhibit.

20 MR. FLEMING: I'm giving him Captain Weaver's
21 interrogatories.

22 JUDGE BAXTER: Defendant's Exhibit "E".

23

24 A. Well, I recognize the top of the page, it is my
25 own handwriting, this incident, medical incident/injury

1 report. Which one do you want me to use? Captain Weaver's or
2 the one I wrote myself?

3 Q. I think it would be wise to use yours.

4 A. Okay, medical incident/injury report, written by
5 myself on May 14th of 2002 at 1:45 in the RHU concerning Mr.
6 Fleming. In A-8 cell I examined Mr. Fleming. I examined
7 Inmate Fleming EM-7566 for injuries that he claimed he
8 sustained by the correctional officers during movement from
9 RHU B-8, his RHU cell, to the law library."

10 During my examination -- According to my examination,
11 "No injuries were noted to the inmate." Also "All portions of
12 the examination were videotaped."

13 Q. When you were giving me the examination, can you
14 explain in detail what you checked?

15 A. Per se examination I don't remember exactly what
16 -- How -- What exactly during the examination.

17 Q. The document is right there.

18 MR. MERICLI: Are you asking him to -- Excuse me,
19 are you asking him to -- May I ask the Court, is he asking him
20 to read the initial impression, illness and injury portion of
21 the report?

22 JUDGE BAXTER: Is that what you want?

23 MR. FLEMING: Yeah.

24 JUDGE BAXTER: Do you want him to try to recall
25 what he did?

1 MR. FLEMING: Yeah.

2 MR. MERICLI: There's a portion of the report,
3 it's denominated number two, it's called initial impression,
4 illness and injury.

5 JUDGE BAXTER: Is that somewhere in that packet?

6 MR. MERICLI: Yes, I would show it right here
7 (indicating).

8 MR. FLEMING: It's up there, the same thing.

9 A. This is the actual medical incident injury report,
10 the department of corrections and it's such that I can't read,
11 et cetera. I quoted Mr. Fleming, I can't read the -- If it
12 can be brought down just a little bit.

13 MR. MERICLI: Okay?

14 THE WITNESS: From the top page down where I can
15 read it.

16 MR. MERICLI: How about that?

17 THE WITNESS: Thank you.

18 MR. MERICLI: Would you like me to give you a
19 copy of the actual document?

20 THE WITNESS: Yes, sir.

21 JUDGE BAXTER: Keep it up there. No, you're going
22 to give him that copy, never mind.

23 THE WITNESS: Thank you.

24 A. I quoted the incident injury report concerning the
25 5-14 incident that occurred at 13:00 hours. The exact

1 Location of the incident injury was the RHU Law Library. I
2 quoted Mr. Fleming, "The guards hurt my wrist and ankle taking
3 me to the Law Library." Quote/unquote. He complained of
4 right wrist being quote slammed through the wicker. Unquote.
5 And then he complained of the guard tripped me. Unquote.

6 I took his vital signs. Again, his respiration was 16,
7 pulse was 76. 124 over 88 was his blood pressure at the time.
8 When I examined him he complained of injury to right wrist and
9 right ankle. Right ankle there was no deformities noted. He
10 was warm and dry. Had positive pedle pulse, positive
11 capillary reflex in his feet. There's no deformities noted.
12 The skin was intact.

13 I didn't notice any -- There's no noted swelling,
14 redness, abrasions, lacerations, et cetera, noted. He
15 complained of right -- Excuse me, he complained of pain in his
16 right lateral aspect of his ankle. There was no -- Again, no
17 swelling, no indication of any injury at that aspect of his
18 body. His plantar dorsiflexion -- As part of the assessment
19 he took his foot and raised and lowered it. There's no
20 indication of any problems with movement.

21 Q. No signs of pain or nothing?

22 A. Just a subjective response by you, that you had
23 pain. There's no objective physical symptoms that you had
24 incurred any type of injury on your right ankle.

25 Q. Did I react when you moved it?

1 A. From my report, no, sir, you didn't. You
2 complained of right wrist pain at the lateral aspect of the
3 right wrist. You complained of -- Your objective response was
4 you complained of a constant sharp, throbbing pain in the
5 right wrist. The right wrist was examined. I found your skin
6 integrity intact, it was warm, it was dry to touch. No
7 lacerations, abrasions, et cetera, were noted. No swelling or
8 deformities. You flexed your fingers well, et cetera.

9 Other than your subjective response that it was causing
10 you some discomfort, I didn't note any physical symptoms
11 associated with it. I didn't respond with any type of
12 treatment because there was no type of injury I physically
13 assessed.

14 And you verbalized an understanding of that, for
15 further assessment and further evaluation or injury, you
16 needed to place a sick line slip.

17 Q. Did you freely check the injuries that I claimed I
18 sustained? Meaning when I say freely, I mean with no objects
19 hindering you from fully checking the injuries?

20 A. There was no coercion or any type of -- Anything
21 that would prevent me from doing an assessment or --

22 JUDGE BAXTER: This is on videotape?

23 MR. FLEMING: Excuse me?

24 JUDGE BAXTER: This is on videotape?

25 MR. FLEMING: Yes, it is.

1 JUDGE BAXTER: Okay.

2 MR. FLEMING: I think I want to show this.

3 JUDGE BAXTER: Okay. The second half?

4 MR. MERICLI: The second half to tape one.

5 Q. So you didn't order no treatment or no further
6 nothing after that?

7 A. No.

8 MR. FLEMING: Okay, I want to show this tape.

9 (At which time, the videotape was played.)

10 JUDGE BAXTER: All right we're going to take an
11 hour and a half lunch break. We'll be back at 2:15. You
12 are still under oath. Do not talk about your testimony
13 while at lunch and you'll come back, still under oath.

14 (At which time, 12:45 p.m., a recess was taken
15 and the proceedings resumed at 2:15 p.m.)

16 JUDGE BAXTER: All right, I believe Mr. Klos was
17 on the stand; is that not correct?

18 CLERK: Yes.

19 JUDGE BAXTER: Mr. Klos, you're still under oath.
20 Mr. Fleming, you can continue when he's situated.

21 MR. FLEMING: I'd like to let the tape continue to
22 play through.

23 JUDGE BAXTER: I thought it was finished.

24 MR. FLEMING: No, it was like a little bit more. It was
25 almost done.

1 JUDGE BAXTER: I'm sorry, I didn't mean to
2 interrupt you before it was done.

3 (At which time, the videotape was played.)

4 MR. FLEMING: Would you please stop it? That's
5 all I need.

6 BY MR. FLEMING:

7 Q. You stated that you didn't feel it was needed to
8 go further with an examination from there?

9 A. No, the examination was complete by me, I didn't
10 see any need to do anymore medical treatment at that point.

11 Q. Because that states right there that you said
12 clearly that you will pass on the evaluation.

13 A. Right.

14 Q. Can you explain to the Court what you mean by
15 that?

16 A. I would file the proper forms with security, and
17 with the medical department. The department of corrections
18 457 form will be passed onto my supervisor. If there was some
19 pertinent need, I would also contact the physician assistant.

20 Q. So you felt there was no need to go further with
21 the --

22 A. At that point, no.

23 Q. What was it that gave you an indication that there
24 was no need?

25 A. My nursing assessment of you, there was no --

1 There was no bleeding, bruising, lacerations, no abrasions, no
2 swelling, no redness. Other than your subjective response to
3 pain, there was nothing to indicate that, that you were
4 injured.

5 Q. You said that you checked my blood pressure?

6 A. Yes.

7 Q. So that's what you saying that it was normal so
8 that was --

9 A. Your blood pressure wasn't elevated, your pulse
10 wasn't elevated.

11 Q. So that's -- What is it that gave you the full
12 understanding that it was -- there was no need for you to
13 consider me needing medical attention without --

14 A. Basically, my experience, my assessment, you did
15 not need at that point any further medical care, you were a
16 non-emergency type of patient.

17 MR. FLEMING: All right. Can I get my Exhibit 2,
18 please? May I approach?

19 JUDGE BAXTER: Yes, you may.

20 MR. FLEMING: Thank you.

21 MR. MERICLI: Excuse me, your Honor, may I just
22 take a quick look at what he's showing the witness?

23 JUDGE BAXTER: Yes, Exhibit 2 is a big stack of things. It's
24 a grievance form from Camp Hill. Another one from
25 Superintendent --

1 MR. FLEMING: I'm going to use my sick call slip
2 of 7-25-02 with --

3 MR. MERICLI: Let me take after quick look.

4 JUDGE BAXTER: It's one, 7-25-02, 5-14-02, one 5-16-02,
5 5-20-02, and 5-21-02. Are they all there? MR.

6 MERICLI: Thanks.

7 BY MR. FLEMING:

8 Q. Can you look at this and read the complaint to the
9 Court, a signed statement from a doctor that checked me the
10 same way that you did and felt that I needed -- MR.

11 MERICLI: I object, that's a great deal of testimony about
12 something I don't think we've had any -- JUDGE

13 BAXTER: Well, I think that he can read it and comment on it.
14 You can ask him a question about it after he reads it, it's in
15 evidence. It's one of the pages in Plaintiff Exhibit 2.

16 What's the date on that, Mr. Klos?

17 THE WITNESS: 7-25-02.

18 JUDGE BAXTER: 7-25-02?

19 THE WITNESS: July 25th.

20 JUDGE BAXTER: When he's done reading it you can
21 ask him a question about it or have him read a portion of it.
22 He doesn't have to read the whole thing.

23 MR. FLEMING: It's not much, it's just like a
24 couple lines.

25 A. On 7-25-02 Mr. Fleming submitted a sick line

1 request, sick call request form. This is a sick call request
2 form to the medical department that he -- that his complaint
3 was that he has put quote unquote, "This is another request
4 slip to inform you that I put in numerous request slips about
5 my wrist and ankle. I was even checked by a doctor on
6 7-23-02. He said he was going to sign for me to get some
7 medication for the pain. I was charged and he never -- " he
8 was -- "I was charged and never received anything. I also
9 filled out a slip on 7-15-02 and 7-22-02. MR.

10 MERICLI: I'm going to object to the relevance of this. I
11 don't see what relevance it has to the events of May 14th and
12 what kind of treatment he received. JUDGE BAXTER:
13 All right, Mr. Fleming, what is your purpose for having him
14 read that page?

15 MR. FLEMING: I'm laying a foundation that the
16 medical check -- my initial medical check was never properly
17 checked beyond the point to see if I needed medication, and I
18 had -- and I had -- and it took me several weeks later to --

19 JUDGE BAXTER: Well, you have this in evidence.
20 You're arguing to me that this was a faulty evaluation of you
21 and that another person said something differently?

22 MR. FLEMING: That's right.

23 JUDGE BAXTER: You have his testimony and you have
24 this page into evidence already. So, Mr. Mericli, is right on
25 this, sustained. We'll move on.

1 MR. FLEMING: All right.

2 MR. MERICLI: If I may --

3 JUDGE BAXTER: That's an argument you can make.

4 MR. MERICLI: If I may, I feel it's necessary to
5 interject for the record at this point that I'm not aware of
6 where he has any medical opinion or record that would indicate
7 that there was anything wrong with Nurse Klos's evaluation.

8 JUDGE BAXTER: He didn't give it to you?

9 MR. MERICLI: Not that I've seen. JUDGE BAXTER: Okay.

10 MR. FLEMING: I'm not allowed to comment on that
11 or not?

12 JUDGE BAXTER: You're saying that document -- in
13 that document that you saw a physician, but Mr. Mericli says
14 it's not in your medical records.

15 MR. MERICLI: You may have seen a physician, but I
16 don't know of any physician who said --

17 JUDGE BAXTER: I see.

18 MR. MERICLI: -- you were injured on May 14th and
19 Mr. Klos did not do a proper evaluation.

20 JUDGE BAXTER: I see. All right.

21 MR. FLEMING: That's the reason why I'm trying to
22 establish a foundation now, on them grounds. JUDGE
23 BAXTER: But that doesn't connect up to May 14th is what he's
24 saying.

25 MR. FLEMING: Well, the complaint -- If you look

1 at what I wrote in the complaint it does. It clearly says
2 about my wrist and my ankle.

3 JUDGE BAXTER: But that could have happened any
4 time. That's July 25th. So he says you haven't connected
5 that up to May 14th. That's what he's complaining about,
6 that's his objection. You understand?

7 MR. FLEMING: Yeah, I understand. JUDGE
8 BAXTER: It's not close in time.

9 MR. FLEMING: Okay.

10 BY MR. FLEMING:

11 Q. During your examination, were the cuffs removed?

12 A. No.

13 Q. Why not?

14 A. That's a security issue. I don't have anything to
15 do with security. It wasn't necessary to remove your
16 handcuffs or ask them to remove your handcuffs to conduct a
17 medical assessment.

18 Q. How many guards was present?

19 A. At least two.

20 Q. So one guard was with the camera and one guard on
21 security?

22 A. I don't know how many were present per se, but at
23 a minimum I always have two guards with me at all times.

24 MR. FLEMING: No further questions. JUDGE
25 BAXTER: Cross-examination?

1

2 CROSS-EXAMINATION

3 BY MR. MERICLI:

4

5 Q. I'd simply like you to take a quick look at these
6 progress notes and tell me if you recognize them as yours?

7 A. The top note on -- I can't read, the paper in the
8 corner, sir.

9 Q. I'm trying to get it in line.

10 A. I'd like to look at it close up, my vision isn't
11 that good. The top portion is my writing.

12 Q. Is this easier to read (indicating)?

13 A. Yes, sir.

14 Q. Can you read it there at this point or would you
15 like me to hand you the actual document?

16 A. No, that's okay I think I can read it, sir.

17 Q. Let me see if I can get it -- That takes it -- Is
18 that good enough?

19 A. You can down one size if you can. Two sizes.

20 Q. Two sizes?

21 A. Okay, that's fine.

22 Q. Okay, great.

23 A. I quote a subjective response. The quote is -- on
24 the subjective response is, "The guard --" "The guards hurt
25 my waist --" "Hurt my wrist and ankle taking me to the

1 library." Quote. Complained of right wrist -- Excuse me
2 complained of right wrist quote, slammed through the wicker,
3 unquote. Complained of the guard, quote, tripped me, period.
4

5 Objective vital signs were, respirations were 16, pulse
6 76, blood pressure 124 over 88 radially. Complained of --
7 Excuse me, I'm sorry, I can't read my own writing there. I'm
8 sorry, complained of injury to right wrist and right ankle.
9 Right ankle with no deformity. Skin integrity intact.
10 Positive pedal pulse. Positive capillary reflex -- I'm
11 referring to the, I believe the right ankle.

12 No swelling, no redness noted. Wiggles toes. Plantar
13 and dorsiflexion right ankle moderately -- Right ankle
14 moderately what? I can't read that per se from this thing.

15 MR. FLEMING: Tender.

16 A. Appears to be reddened. Complains of right -- at
17 the right ankle at the lateral aspect. Right wrist complained
18 of pain at lateral aspect of right wrist. Complained of a
19 constant, sharp pain, quote throbbing. Right wrist had no
20 deformity. Skin integrity intact.

21 Q. Warm and dry maybe?

22 A. Yes, it is, warm and dry. Flexes fingers well.
23 Positive radial pulse. No swelling or redness noted at site.
24 No distress noted overall. Assessment, alternation comfort,
25 potential for.

1 Q. What does that mean?

2 A. Usually -- It's a nursing diagnosis, if there's --
3 If you find some type of problem, you give it a nursing
4 diagnosis, et cetera. He was potentially -- I didn't see
5 anything -- He had a subjective response of that he was in
6 pain. I didn't note any type of objective findings to support
7 that finding -- to support that subjective response by the
8 patient.

9 And I just put potential for alteration. And comfort
10 -- His comfort level there's a alteration for it based on a
11 subjective response.

12 Q. I understand. Please continue.

13 A. No treatment noted. No injuries noted.

14 Verbalized understanding of placing sick line slip for further
15 evaluation.

16 At that point he was assessed there was no type of
17 treatment that I could perform. He needed a further
18 examination by the physician assistant and/or the physician.

19 Q. Okay. Now one last thing, we were never able to
20 meet before your testimony here today?

21 A. Right, sir.

22 Q. And you've never had an occasion before you looked
23 at these things today to look at them again since you prepared
24 them?

25 A. Yes, sir, I haven't -- I haven't seen that since

1 2002.

2 MR. MERICLI: Thank you very much. JUDGE

3 BAXTER: Anything else, Mr. Fleming? MR. FLEMING:

4 Yeah, just a few questions real quick.

5

6 REDIRECT EXAMINATION

7 BY MR. FLEMING:

8

9 Q. You said -- You said the right wrist -- What did
10 you say the right wrist showed?

11 A. I didn't find any injuries associated with your
12 right wrist.

13 Q. And you said the right ankle was tender --

14 MR. MERICLI: If you could wait a second, I could
15 put this back on so he has a chance to have it in front of
16 him.

17 A. If it --

18 Q. Could you read that part again, please?

19 A. Yes, sir.

20 Q. About the right ankle?

21 A. It would -- Excuse me, it would be easier if I
22 could just look at the notes.

23 Q. I can't read it myself. I tried to read it. I
24 can't read it.

25 A. The last aspect of the notes I can't read.

1 MR. MERICLI: May I approach the witness, your Honor?

2 JUDGE BAXTER: Yes, you may.

3 THE WITNESS: Thank you.

4 Q. Something about the right ankle mildly -- You said
5 mildly something?

6 JUDGE BAXTER: Moderately red I think?

7 A. I believe so. Right ankle moderately red.

8 Q. Okay, you can stop there.

9 A. Yes, sir.

10 Q. Moderately red. And you said you further did
11 evaluation to the PA, to the physician --

12 A. To the physician assistant and/or to the
13 physician, based upon your placing a sick line slip in.

14 Q. So did you see my ankle was mildly red?

15 A. Yes, I did.

16 MR. FLEMING: All right, no further questions.

17 JUDGE BAXTER: Anything else, Mr. Mericli? MR.

18 MERICLI: No.

19 JUDGE BAXTER: You're finished. Thank you very
20 much, Mr. Klos, you can step down.

21 All right, next witness, Mr. Fleming.

22 MR. FLEMING: I'd like to call PA -- You have to
23 spell his name, T-E-L-E-G-A.

24

25 D A N I E L T E L E G A , first having been duly

1 sworn, testified as follows:

2

3 CLERK: Would you please state your full name and
4 spell your last name for the record.

5 THE WITNESS: Daniel S. Telega, T-E-L-E-G-A.

6

7 DIRECT EXAMINATION

8 BY MR. FLEMING:

9

10 Q. Thank you. How are you employed?

11 A. I'm a physician assistant contracted to the
12 Department of Corrections by Prison Health Services.

13 Q. How long have you been involved in that?

14 A. Nine years.

15 Q. Okay, I'm going to direct your attention to
16 5-15-02, can you recall what you did with the plaintiff on
17 that day, your contact?

18 A. Yes, I did a medical evaluation.

19 Q. Can you describe what it entailed?

20 A. It was an examination of the right wrist and right
21 ankle. No findings were noted.

22 Q. So you didn't see mildly red ankle or wrist?

23 A. No significant findings.

24 Q. As stated?

25 A. No.

1 Q. Did you prescribe anything?

2 A. I do believe I recommended Advil or Tylenol as per
3 the nursing protocol.

4 Q. What was it that made you come to the conclusion
5 to prescribe this medication?

6 A. It's a protocol that if any inmate has a headache
7 or any type of pain, they can request Advil or Tylenol from
8 the nursing staff during the medication rounds.

9 Q. What kind of pain?

10 A. Advil or Tylenol.

11 Q. No, I said --

12 A. What kind? Any aches or pains that an inmate may
13 have including headaches, body aches. All they have to do is
14 request it. It's not an actual prescription.

15 Q. So this was -- this is what you felt was necessary
16 for this purpose?

17 JUDGE BAXTER: The question is, you felt that
18 Tylenol or Advil was necessary for you?

19 MR. FLEMING: For my injuries, yes. JUDGE
20 BAXTER: That's the question.

21 A. If there was any problem, it could have been
22 requested.

23 Q. You did a request -- Did you get a request from
24 me?

25 A. I do believe so.

1 Q. And can you state what the request said?

2 A. I cannot recall the exact wording on the request
3 at this time.

4 Q. Well, can you describe what your initial contact
5 was with me for?

6 A. It was for right ankle and right wrist pain due to
7 an alleged assault.

8 Q. Okay, thank you. 5-16-02 I'd like to direct you
9 to your contact with me on that day.

10 MR. FLEMING: Can I refresh his memory like on
11 certain -- like on the days that I'm describing because it's
12 been awhile?

13 JUDGE BAXTER: Yes, and you can lead him in that
14 regard, but you can also show him any documents that will help
15 him refresh his memory as well.

16 MR. FLEMING: All right.

17 BY MR. FLEMING:

18 Q. 5-16-02 -- Was the 5-15 exam videotaped?

19 A. I cannot recall.

20 Q. So you don't -- you can't recall if it was
21 videotaped?

22 MR. MERICLI: It's been asked and answered.

23 JUDGE BAXTER: He just said no.

24 Q. 5-16-02, I show you --

25 MR. FLEMING: Can I approach the witness, your

1 Honor?

2 JUDGE BAXTER: Yes, you may.

3 MR. FLEMING: Thank you.

4 Q. I'd like to show you -- You can check it out if
5 you want, 5-16-02, these are your assessments from an initial
6 --

7 JUDGE BAXTER: Do you have a question for the
8 witness?

9 MR. FLEMING: Me?

10 JUDGE BAXTER: Are you asking him to read it and
11 comment on that?

12 MR. FLEMING: What I'm -- First, I'm refreshing
13 his memory on it.

14 JUDGE BAXTER: All right.

15 MR. FLEMING: Then I'm going to comment on it.

16 JUDGE BAXTER: Ask him a question.

17 MR. FLEMING: All right.

18 JUDGE BAXTER: I don't want you to comment, I want
19 you to ask him a question.

20 MR. FLEMING: All right.

21 Q. On 5-16-02, was that videotaped?

22 A. I cannot recall.

23 Q. Do you recall -- Can you explain the details of
24 what occurred on 5-16-02?

25 A. I do believe it was a request for further

1 evaluation despite negative exam findings, x-ray consultations
2 were written.

3 Q. So can you explain where this occurred at?

4 A. In the RHU.

5 Q. No, the x-ray?

6 A. In the medical department of SCI Albi on.

7 Q. And you don't recall no video -- no video of this

8 --

9 MR. MERICLI: Objection, asked and answered
10 several times.

11 JUDGE BAXTER: Sustained. Move on.

12 MR. FLEMING: All right

13 BY MR. FLEMING:

14 Q. What did you do?

15 A. I ordered the x-rays and I reviewed the radiologic
16 reports, as well as viewed the x-rays themselves.

17 Q. Is the report written?

18 A. Yes, there is.

19 Q. What did the report say?

20 A. No significant findings.

21 Q. Okay. I'd like to ask you a few questions -- a
22 few more questions then I'm done.

23 JUDGE BAXTER: All right.

24 Q. What does a x-ray check for?

25 A. Fractures, dislocations, any type of bone

1 abnormality. It does show some soft tissues as well.

2 Q. What does a MRI check for?

3 A. It's more specific for ligament, muscle, and
4 associated soft tissue injuries.

5 MR. FLEMING: No further questions. JUDGE

6 BAXTER: Mr. Mericli?

7

8 CROSS-EXAMINATION

9 BY MR. MERICLI:

10

11 Q. Did you see anything to indicate that an MRI
12 should be administered?

13 A. No.

14 Q. I'm going to ask you if you could just briefly
15 read your physician's assistant notes from your medical
16 examination, which I've marked here (indicating). Would you
17 rather have them with you or can you read them from this?

18 A. I can read them.

19 Q. Okay. Let me just get the day here for you.
20 Okay, I think that's the entire page. Is it legible to you?
21 Can you read it?

22 A. Yes, sir.

23 Q. Okay, would you please read those signed entries
24 that are by you in your professional capacity?

25 A. On 5-15-02 there is a partial progress note

1 starting with the assessment, right ankle sprain/strain mild.
2 Status, post contusion, right wrist. Exam essentially within
3 normal limits. Subjective complaint inconsistent with
4 physical findings. Plan, in light of minimal findings will
5 check x-ray right ankle and right wrist. Advised meds
6 Advil/Tylenol, four times a day as needed for pain per nursing
7 protocol. Return to clinic PRN as needed. Patient voiced
8 understanding.

9 Q. Will you proceed to the next entry that's yours?

10 A. 5-17-02, subjective complaint, still complaint of
11 right wrist and right ankle pain. No help with Advil/Tylenol
12 per nursing staff. Objective findings as per 5-15-02 exam,
13 reflexes, range of motion right wrist and ankle, no soft
14 tissue/ecchymosis, which is bruising, slash bony abnormality
15 noted. Right wrist and ankle tender. Dorsal distal at left
16 forearm. That's the top end of the right -- the right forearm
17 and interior to the lateral malleolus of the right ankle or
18 inferior to the lateral malleolus. Right ankle no
19 instability, no antalgia, which is abnormal gait. Circulatory
20 motor function was intact. Assessment, alleged assault.
21 Mild right ankle sprain/strain, right wrist contusion.
22 Suspect malingering. Subjective complaint inconsistent with
23 physical exam. Plan, in light of minimal findings continue
24 x-ray per -- x-rays per previous orders. Recommend Motrin 800
25 by mouth three times a day with food as needed for 14 days,

1 return to clinic as needed.

2 Patient informed understanding.

3 5-21-02, subjective complaint, as above. Objective
4 findings as above. X-rays of right ankle and right wrist
5 reviewed, no acute fractures noted/within normal limits.

6 Assessment, malingering. Plan, continued per previous orders.

7 MR. MERICLI: Thank you, I have no further
8 questions.

9 JUDGE BAXTER: Mr. Fleming, on this do you have
10 any questions?

11 MR. FLEMING: Yes.

12 JUDGE BAXTER: All right.

13 MR. FLEMING: Can I approach the witness?

14 JUDGE BAXTER: Yes. Do you have something to show him?

15 MR. FLEMING: Yeah.

16 JUDGE BAXTER: All right.

17 MR. FLEMING: My exhibit.

18

19 REDIRECT EXAMINATION

20 BY MR. FLEMING:

21

22 Q. You can look at it (indicating), and tell -- would
23 you tell the Court what that is?

24 A. The top is a -- slip for inmate Fleming for a sick
25 call request of \$2 and prescription of \$2 dollars for a total

1 of \$4. It was signed by you. The official approval was our
2 nursing supervisor. They charge the charge of \$4 that was
3 entered July 25th, '02.

4 Q. And on the next one you can just read the name of
5 the staff who made it official?

6 A. Dr. -- Dr. Baker our medical director, commented
7 on the sick call request, and it was sent back to you.

8 Q. And what's the date on it?

9 A. The date of his signature was July 26th, 2002.

10 MR. FLEMING: Okay, no further questions.

11 JUDGE BAXTER: Mr. Mericli?

12 MR. MERICLI: Nothing.

13 JUDGE BAXTER: Thank you, you may step down.

14 THE WITNESS: Thank you, your Honor.

15 MR. FLEMING: Thank you. I'm going to move onto
16 the defendants of Camp Hill now.

17 JUDGE BAXTER: All right.

18 MR. FLEMING: All right, first I'd like to call
19 Sergeant Kreider.

20

21 R O B E R T K R E I D E R, first having been duly
22 sworn, testified as follows:

23

24 CLERK: Would you please state your full name and
25 spell your last name for the record.

1 THE WITNESS: Lieutenant Robert Kreider. Last
2 name, K-R-E-I -D-E-R.
3

4 **DIRECT EXAMINATION**

5 BY MR. FLEMING:

6

7 Q. How are you employed?

8 A. I'm a Lieutenant for the department of corrections
9 at Camp Hill.

10 Q. How long have you been a Lieutenant?

11 A. About seven months.

12 Q. How long have you been involved in corrections?

13 A. Thirteen years.

14 Q. I want to direct your attention to -- I need my
15 documents -- Excuse me for a minute.

16 JUDGE BAXTER: You can have a minute. Is there
17 something up here you're looking for?

18 MR. FLEMING: Yeah. Can I approach the witness?

19 JUDGE BAXTER: You may. What do you have?

20 MR. FLEMING: I need Exhibit 8.

21 JUDGE BAXTER: Here (indicating).

22 Q. I'd like to direct your attention to August 12th,
23 that's when the slip -- August 11th -- of August 11th, I'd
24 like to --

25 JUDGE BAXTER: 2002.

1 Q. 2002, August 11th of -- What did I say? August
2 2nd of 2002 with the -- Can I see that, please?

3 A. Yeah.

4 Q. Excuse me here for a minute. I'm like rambling
5 right now.

6 Okay, I'd like to direct your attention to August 2nd
7 of 2003. My fault, sorry, 2003, of the assault of another
8 inmate next door to my cell, which I filled out a affidavit
9 for this inmate.

10 JUDGE BAXTER: I'm sure there's a question in
11 there somewhere, Mr. Fleming. Let's get to it.

12 Q. Were you aware that I informed staff through -- of
13 a alleged incident that occurred on August 2nd?

14 A. What incident?

15 Q. Of a assault on another inmate.

16 MR. MERICLI: I object to the form of the
17 question. I don't think it's clear what --

18 JUDGE BAXTER: I'm not sure what he's asking
19 either. The document you showed him is a cover sheet and
20 inmate request to staff member.

21 MR. FLEMING: Right.

22 JUDGE BAXTER: Dated 8-12-03. What's the
23 question?

24 Q. Are you aware of this request? Let me make a long
25 story short. You can check it out for yourself first. Then

1 --

2 JUDGE BAXTER: Then the --

3 A. No.

4 JUDGE BAXTER: Then to the question on the floor,
5 he says, no.

6 MR. FLEMING: That's what I was trying to get at,
7 excuse me.

8 JUDGE BAXTER: Okay.

9 Q. So you're not aware of that, okay.

10 MR. FLEMING: Can I hold this for a minute, your
11 Honor?

12 JUDGE BAXTER: It's your exhibit, absolutely.

13 MR. FLEMING: All right.

14 JUDGE BAXTER: You can't change it in any way,
15 it's part of the evidence.

16 Q. You stated you're not aware of that?

17 A. No, I'm not aware of the request

18 JUDGE BAXTER: That's three times you've asked
19 him.

20 Q. Did you read it?

21 A. When you had it laying up here?

22 Q. Yes.

23 A. No.

24 Q. Can you read it to the Court?

25 A. You want me to read it to the Court?

1 Q. Yeah.

2 A. Okay. This request --

3 MR. MERICLI: I object because I don't believe it
4 has -- it is his writing.

5 THE WITNESS: It's not made out to me.

6 MR. MERICLI: Just anyone can read it and --

7 JUDGE BAXTER: Where are you going with this, because
8 it's already part of the record? I'm going to look at that
9 anyway.

10 MR. FLEMING: I'm laying the foundation so that I
11 can establish my direct examination in the order that I had --

12 JUDGE BAXTER: That you want to go?

13 MR. FLEMING: Right.

14 JUDGE BAXTER: But -- Mr. Mericli, is it
15 relevance? Is it hearsay?

16 MR. MERICLI: He's attempting to impeach a witness
17 -- What I think he's trying to do is to cross-examine him
18 about --

19 JUDGE BAXTER: I don't have a clue. What do you
20 think he's doing?

21 MR. MERICLI: I think he's trying to get him
22 coming and going. He's trying to impeach him. JUDGE
23 BAXTER: On this?

24 MR. MERICLI: On a statement that was written by
25 somebody else.

1 JUDGE BAXTER: Are you trying to impeach him?

2 MR. FLEMING: No.

3 JUDGE BAXTER: He's trying to lay a foundation he
4 says.

5 MR. FLEMING: I'm trying to get --

6 JUDGE BAXTER: Why don't you lead, this is what
7 happened on August 2nd, are you aware of that? If he's not,
8 well then say, this is what happened and then go to your
9 question.

10 MR. MERICLI: He said he's never seen the
11 document, your Honor.

12 JUDGE BAXTER: He's never seen this document, he
13 doesn't know anything about this incident, and the problem
14 with all of that is if you want that incident to come into the
15 record, it's already in the record by that document. But you
16 can't bring it in by someone who doesn't know anything about
17 it.

18 MR. FLEMING: Right, that's what I -- JUDGE
19 BAXTER: You can't make him know something about it by having
20 him read that document. It's not refreshing a recollection if
21 he has no recollection. MR. FLEMING: He already said
22 no. I just wanted to make sure that he understood what he was
23 saying no to. JUDGE BAXTER: I see. You read it and
24 you still -- now this is the last time -- have no recollection
25 of that incident?

1 THE WITNESS: I have no recollection of that.

2 JUDGE BAXTER: All right.

3 THE WITNESS: To me.

4 JUDGE BAXTER: All right, moving along.

5 MR. FLEMING: Okay, now I'll get the ball rolling.

6 I need Exhibit 7.

7 JUDGE BAXTER: Seven (indicating).

8 MR. FLEMING: Can I approach the witness, please?

9 JUDGE BAXTER: To show him Exhibit 7, yes, you
10 may.

11 BY MR. FLEMING:

12 Q. Are you aware of that?

13 A. The incident, yes.

14 Q. All right. Now I'd like to direct your attention
15 to this incident and this misconduct. Can you explain what
16 happened?

17 A. You received a misconduct from Officer Wittel.

18 Q. Can you give some details for what to the Court
19 please?

20 A. We were running yard, I was outside the block,
21 Officer Allen and Officer Wittel were bringing in another
22 inmate, I have no idea who, out to the yard. At that time,
23 someone was banging on the window. I directed Officer Wittel
24 to go in and find out who it was. The inmate, whoever it was
25 at that time, because he was not identified, continued to bang

1 on the window. Officer Wittel went in and identified you
2 banging on your window.

3 Q. How far away were you from this window?

4 A. About from here to the flat screen over there
5 (indicating).

6 Q. Can you explain to the Court exactly how wide
7 these windows are?

8 JUDGE BAXTER: What are the size of the windows?

9 A. Maybe a foot wide and --

10 Q. Can you -- Like this big (indicating)?

11 JUDGE BAXTER: It's better to have a foot wide. You can't put
12 this big on the court reporter's transcript. A foot wide and
13 how tall?

14 THE WITNESS: Maybe two foot.

15 JUDGE BAXTER: Okay.

16 THE WITNESS: High.

17 BY MR. FLEMING:

18 Q. So you said you were how far from the window?

19 A. From here to the screen over there, the flat --
20 biggest flat screen in the courtroom.

21 Q. And you seen somebody banging on a window?

22 A. No, I said I heard.

23 Q. You said you heard. If you heard it you didn't
24 see it though?

25 A. If I sent an officer inside a cell block because I

1 heard someone banging on a window and that officer identifies
2 you, that means I'm a witness.

3 Q. Okay. Now who was this officer?

4 A. I already answered that question once, it was
5 Officer Wittel.

6 Q. Okay. Here it states there was somebody else
7 there, too?

8 A. Officer Allen.

9 Q. Did you send him, too?

10 A. To my recollection, no. But he did hear the
11 banging. I don't know for sure because Officer Wittel and
12 Officer Allen escorted an inmate out to the yard and I
13 addressed Officer Wittel in Officer Allen's presence.

14 Q. So how did you find out it was the plaintiff?

15 A. Officer Wittel walked inside the block and clearly
16 identified you.

17 Q. And came back. And what happened when he did
18 that? What did he do?

19 A. He came back and reported to me who it was.

20 Q. And you signed on this misconduct as a witness
21 with no evidence --

22 MR. MERICLI: Objection to the form of the
23 question.

24 JUDGE BAXTER: You're assuming facts that --
25 You're actually making a determination.

1 MR. FLEMING: All right.

2 JUDGE BAXTER: What you have -- You have to ask
3 the question so that it's not --

4 MR. FLEMING: Leading.

5 JUDGE BAXTER: Well, I'm going to allow you to
6 lead. Ask the question. Objection overruled. Let's try
7 again, ask the question again.

8 MR. FLEMING: All right.

9 BY MR. FLEMING:

10 Q. You said that Officer Wittel came back and told
11 you who it was?

12 A. Yes.

13 Q. And you signed as a witness based on what he told
14 you?

15 A. No, I signed as a witness -- Which I didn't sign,
16 he put my name there. I was a witness because I heard the
17 banging of the window.

18 Q. Wait a minute. Let me read that, redirect -- Let
19 me redirect back to, you mean he forged your name on this
20 misconduct?

21 A. No.

22 Q. Did you sign it?

23 A. I believe my name is printed on that misconduct,
24 not signed.

25 Q. Did you print your name on this misconduct?

1 A. No.

2 MR. FLEMING: Don't have no further -- I'll move
3 on to his affidavit. I need my -- I need --

4 MR. MERICLI: It's Exhibit 6, sworn affidavit, is
5 that what you need?

6 MR. FLEMING: Yeah.

7 MR. MERICLI: Why don't you put it on that thing
8 right there and he can read it and everyone else can read it.

9 Q. Sergeant Kreider can you see this exhibit here
10 (indicating)?

11 A. I can see, yes.

12 Q. All right, you may read it to let you see --

13 JUDGE BAXTER: Do you want to give him a few minutes to
14 read it? It's long.

15 Q. You don't got to read the whole thing, just see
16 what it entails.

17 A. What question do you want to ask me?

18 Q. What I'm asking you is did you read that?

19 A. I've read over it, yes.

20 Q. All right, so you pretty much can get a foundation
21 what's in it?

22 A. You wrote a sworn affidavit.

23 Q. Do you remember --

24 A. It involved Lieutenant Leggore at the time,
25 myself, Officer Wittel and Officer Allen.

1 Q. You remember seeing it?

2 A. I see it now, yes.

3 Q. I mean beyond this point?

4 JUDGE BAXTER: Have you seen this before?

5 THE WITNESS: I think that I got a copy -- There
6 was a suit I believe withinmate Colbert that never went
7 anywhere, I think I got a copy of this with that, but I can't
8 recall.

9 Q. Okay.

10 A. But I think it was in at least 2003, I think.

11 Q. Thank you. So you did see this before then?

12 A. When I received a copy --

13 JUDGE BAXTER: You're asking the same question
14 always in repeat. That's a part of why it's taking so long.
15 After he makes the answer, ask him the next question, don't
16 say, so you just did. I'm getting testy.

17 MR. FLEMING: I don't have no further questions
18 for this witness, your Honor.

19 JUDGE BAXTER: Excellent. Mr. Mericli?

20 MR. FLEMING: I'll move on.

21

22 CROSS-EXAMINATION

23 BY MR. MERICLI:

24

25 Q. Where was Mr. Fleming's assignment -- Where was

1 Mr. Fleming's housing assignment at SCI Camp Hill?

2 A. He would have been on the "D" pod, and the best of
3 my knowledge he was probably in cell three or four.

4 Q. What type of confinement was he in? Was he in
5 general population --

6 A. He was in our special management unit.

7 Q. What is the special management unit, just briefly?

8 A. It's a unit above an RHU setting, a restricted,
9 housing setting. There's basically five phases to it. Phase
10 one being that they're back out into general population.
11 Phase five is they have DC time when they first come in to an
12 SMU setting. Usually they have disciplinary custody times.
13 They have to -- On their behavior time, the longer they're in
14 without misconducts they get some of their DC time taken or
15 set aside.

16 It's a program to help inmates who are behavioral
17 problems and assaultive to staff and things like that, get
18 back out into general population, okay.

19 Q. So, would you think it's fair to say it's a
20 special rehabilitation program for particularly incorrigible
21 inmates?

22 A. Yes, it's a very structured special setting,
23 everything is done on behavior.

24 Q. Now did you have any knowledge that Mr. Fleming
25 had filed suit against people at SCI -- at SCI Albion?

1 A. No.

2 Q. Would you have taken an interest in something like
3 that?

4 A. No.

5 Q. We were talking a little bit earlier today, you
6 mentioned earlier -- you mentioned something about the nature
7 of remarks that prisoners in the SMU made to you about filing
8 suit --

9 A. That happens on --

10 Q. Would you share that with the Court, please?

11 MR. FLEMING: I object.

12 JUDGE BAXTER: On what basis?

13 MR. MERICLI: It's just --

14 JUDGE BAXTER: Hold on.

15 MR. FLEMING: Relevance.

16 MR. MERICLI: Just -- This is relevant to show --
17 This is a retaliatory conduct case, it's relevant to show he
18 lived and worked in the SMU and in an ambience of constant
19 reference to the possibility of suit, threats of suits --

20 JUDGE BAXTER: The objection is overruled. You can
21 answer the question.

22 THE WITNESS: Would you please repeat your
23 question again?

24 BY MR. MERICLI:

25 Q. What type of atmosphere was there in terms of

1 relations between inmates and corrections officers in the SMU
2 and discussions of lawsuits by the inmates in the SMU?

3 A. Working in the SMU setting where inmates are in
4 there for behavioral problems, outside the normal operations
5 of an institution, it's not uncommon every day for an inmate
6 or two to -- as soon as you tell them something they don't
7 want to hear, to tell you they got after lawsuit against you
8 or something like that or alleged abuse. It's not uncommon.
9 I would say it happens every day.

10 Q. Well, what type of a reaction did you -- And to
11 the extent you might be able to comment on it, your colleagues
12 had as a result of that exposure to that type of
13 recrimination?

14 A. My personal thing is I could careless what they
15 say when it -- because it happens every day, you just grow
16 accustomed to it.

17 Q. You become desensitized?

18 A. Correct.

19 Q. Do you remember how many times, including -- Well,
20 let me make this clear. You did not write this particular
21 misconduct, correct?

22 A. Correct.

23 Q. Do you remember how many misconducts you wrote
24 against Mr. Fleming while he was in SMU?

25 A. Two to the best of my knowledge.

1 Q. Could you comment on whether that's a large amount
2 or a small amount for a prisoner in that custody status?

3 MR. FLEMING: Objection.

4 A. That's a small action.

5 JUDGE BAXTER: Whoa, there's an objection.

6 MR. FLEMING: It was more than two. JUDGE
7 BAXTER: Well, no, that's his answer. You can't change his
8 answer.

9 MR. FLEMING: All right.

10 JUDGE BAXTER: You can't change his answer.

11 MR. FLEMING: My fault, sorry.

12 BY MR. MERICLI:

13 Q. How many?

14 JUDGE BAXTER: His objection is withdrawn.

15 A. Two.

16 Q. Do you have any idea in view of the fact you were
17 sergeant at that time how many Officer Wittel would have
18 written against him?

19 A. The information that we gathered from the DOC
20 internet when we come up here was I issued two misconducts, to
21 inmate Fleming, Officer Wittel wrote one misconduct, and
22 Officer Allen wrote one misconduct.

23 Q. Could you comment for the understanding of the
24 Court on what that means in terms of your relationship to him
25 as an inmate in SMU?

1 A. That's telling me that we don't give him any more
2 attention than we gave any other inmate.

3 Q. Do you recall an incident involving inmate
4 Colbert?

5 A. Yes.

6 Q. What happened during that incident?

7 A. Myself, Lieutenant Leggore, Officer Allen, Officer
8 Wittel were going -- were conducting a cell search. Inmate --
9 Excuse me, inmate Colbert was outside his cell. I believe
10 Officer Wittel was searching the cell, but it's been a couple
11 years, I apologize.

12 Inmate Colbert continued to argue with Officer Allen.
13 He was holding him outside the cell cuffed. The Lieutenant
14 told him, told inmate Colbert to stand there and be quiet,
15 because he continued to try to turn around when he was suppose
16 to be standing facing forward. He instructed inmate Colbert
17 -- the Lieutenant did -- he instructed inmate Colbert that the
18 next time he spoke out or tried to turn around he would be
19 held against a wall until his cell search was complete.

20 He no sooner had got the words out of his mouth and
21 Colbert tried to turn around again. At that time I gave
22 direction as the sergeant to place inmate Colbert against the
23 wall and hold him in place until his cell search was complete.

24 Q. Am I right that this happened on August 2nd, 2003?

25 A. If you have the documentation there in front of

1 you, yes. Other than that, I don't recall.

2 Q. You do recall, however, from what's been shown
3 that Officer Wittel's conduct against Mr. Fleming was August
4 11th, 2003?

5 A. Yes, sir.

6 Q. Are you confident then that this incident with
7 Colbert occurred before the incident with Fleming?

8 A. Yes, it did.

9 Q. Did you have any reason to think Fleming had
10 anything to do with the incident with Colbert?

11 A. No.

12 Q. Was Fleming present in the sense of being out of
13 his cell?

14 A. No.

15 Q. So he wasn't physically or personally involved in
16 anyway with Colbert?

17 A. No.

18 Q. Now he's shown you this affidavit but he hasn't
19 shown you the date on this. Will you take a look at the date
20 on it now (indicating)?

21 A. August 2nd, 2000.

22 Q. And I'm correct that this --

23 A. I -- I think it's 2000 or 2000 --

24 Q. 2003?

25 A. Okay, August 2nd, 2003.

1 Q. Can you see the signatures at the bottom, Ronald
2 Fleming and Tyrone Colbert?

3 A. Yes, sir.

4 Q. You were shown this before by Mr. Fleming on
5 direct. And this is a sworn affidavit that has to do with
6 their take on the Colbert incident you just described, right?

7 A. Yes, sir.

8 Q. Did you see this at any time on or before August
9 11th, 2003 when you heard the banging on the window?

10 A. No.

11 Q. Did you have any idea on August 11th that it
12 existed?

13 A. No.

14 MR. MERICLI: No further questions. Thank you,
15 sir.

16

17 REDIRECT EXAMINATION

18 BY MR. FLEMING:

19

20 Q. Do you see that date on there (indicating), sir?

21 A. Yes.

22 Q. Can you tell the Court what that date says?

23 MR. MERICLI: Asked and answered.

24 MR. FLEMING: Okay. Okay, never mind.

25 JUDGE BAXTER: Sustained.

1 MR. FLEMING: May I approach the witness?

2 JUDGE BAXTER: To show him that affidavit? MR.

3 FLEMING: Yes.

4 JUDGE BAXTER: Yes, go ahead.

5 BY MR. FLEMING:

6 Q. Are you familiar with this document? JUDGE

7 BAXTER: Something different? What is it you're showing him?

8 MR. FLEMING: His affidavit.

9 JUDGE BAXTER: His affidavit?

10 MR. FLEMING: His interrogatory with the affidavit
11 on it.

12 JUDGE BAXTER: That would be Defendant's Exhibit
13 "G"?

14 MR. MERICLI: I believe so, your Honor.

15 THE WITNESS: Yes.

16 BY MR. FLEMING:

17 Q. Okay, I'd like for you to tell the Court the date
18 on that?

19 A. September 29th, 2004.

20 Q. Is it before or after the document that you're
21 looking at now?

22 A. After.

23 Q. Thank you. Can you read number seven, please?
24 This (indicating).

25 A. I can't really read it clearly.

1 MR. FLEMING: Your Honor, can I read it in front
2 of his attorney so he can see that I ain't changing nothing
3 up?

4 JUDGE BAXTER: He has a copy. You can read what
5 you want to read and then ask your question.

6 MR. FLEMING: All right.

7 Q. I ask you, were you aware that on August 2nd, 2003
8 that the plaintiff filled out a sworn affidavit for Tyrone
9 Colbert with your name -- with your name on it? And you said,
10 no.

11 MR. MERICLI: I'm going to object and move to
12 strike, this is irrelevant. He said -- It's not inconsistent
13 with anything he's testified to. JUDGE BAXTER:
14 Actually it supports it.

15 MR. FLEMING: I'd like to move that in evidence --
16 It's already in.

17 JUDGE BAXTER: The objection is overruled. It's
18 fine. He testified to that, and this is in evidence.

19 MR. FLEMING: No further questions. JUDGE BAXTER:
20 Anything else, Mr. Mericli?

21 MR. MERICLI: No, your Honor.

22 JUDGE BAXTER: All right, you may step down.
23 Lieutenant Kreider, thank you.

24 We're going to take a -- We've been here an hour.
25 Let's take a 15 minute break to 3:30. Then I'm going to go to

1 4:30 and then I'm going to have to stop court at 4:30.

2 MR. MERICLI: Very good, your Honor. JUDGE

3 BAXTER: All right, 15 minute break.

4 (At which time, 3:15 p.m., a recess was taken and
the proceedings resumed at 3:35 p.m.)

5

6 JUDGE BAXTER: All right, Mr. Fleming.

7 MR. FLEMING: Yes, I'd like the call CO Allen to
8 the stand.

9

10 PAUL ALLEN, first having been duly sworn,
11 testified as follows:

12

13 CLERK: Would you please state your full name and
14 spell your last name for the record?

15 THE WITNESS: Paul F. Allen, A-L-L-E-N.

16

17 DIRECT EXAMINATION

18 BY MR. FLEMING:

19 Q. How are you employed?

20 A. Excuse me?

21 Q. How are you employed?

22 A. I'm a Corrections Officer, SCI Camp Hill.

23 Q. Thank you. How long have you been employed there?

24 A. About seven and a half years.

25 Q. I want to direct your attention to August 2nd,

1 2002 -- 2003 and August 11th of 2003. First, I want to show
2 you an exhibit.

3 MR. FLEMING: If I may approach the bench?

4 JUDGE BAXTER: You may.

5 MR. FLEMING: I think I got it right this time.

6 Q. See if you're familiar with that (indicating)?

7 JUDGE BAXTER: What exhibit are you showing him for the
8 record?

9 MR. FLEMING: The request slip.

10 THE WITNESS: Number eight.

11 JUDGE BAXTER: Number eight, Plaintiff Exhibit
12 number 8.

13 A. Okay.

14 Q. What?

15 A. Okay.

16 Q. Are you familiar with it?

17 A. No.

18 Q. You don't know anything about affidavit?

19 A. No, I do not.

20 Q. I'd like to direct your attention now to August
21 11th, 2003 a incident report that was signed with your name --
22 printed with your name on it as a witness for the plaintiff,
23 me, banging on a window for refusing to obey an order, using
24 abusive, obscene and offensive language to an employee; do you
25 recall that?

1 A. I don't recall the whole situation, no. If I saw
2 the document --

3 MR. FLEMING: May I --

4 JUDGE BAXTER: Excuse me, his answer was, no, I
5 don't recall. I reviewed the document. What's your question?

6 MR. FLEMING: This is Exhibit 7. I showed him
7 Exhibit 8 which was the request. Now I'm showing him the
8 misconduct, Exhibit 8.

9 JUDGE BAXTER: Ask him your next question. He
10 said he doesn't recall.

11 MR. FLEMING: May I approach the witness and show
12 him this exhibit?

13 MR. MERICLI: You may.

14 MR. FLEMING: All right.

15 A. I looked at the document, okay.

16 Q. Are you familiar with it?

17 A. I am now, yes.

18 Q. Did you print your name on here as a witness?

19 A. No, I did not.

20 Q. Who did it?

21 A. Officer Wittel.

22 Q. He wrote the --

23 A. He would have printed my name.

24 Q. It's a document on the screen right in front of
25 you. Would you take a look at that, please and -- Can you

1 read that?

2 A. Yep.

3 Q. All right, you can check it out.

4 A. Okay.

5 Q. See if you're familiar with that. That's exhibit

6 --

7 JUDGE BAXTER: Plaintiff Exhibit 8.

8 MR. FLEMING: Yes.

9 CLERK: Is this your sworn affidavit, sir?

10 MR. FLEMING: Yeah.

11 CLERK: It's actually Plaintiff Exhibit 6.

12 MR. MERICLI: He got it from me. I mismarked them.

13 A. Okay.

14 Q. Are you familiar with that?

15 A. I'm familiar with the events.

16 Q. Are you familiar with the sworn affidavit?

17 A. Not until I was served to come to court and I saw
18 it.

19 Q. Did it have this on it on the bottom when you
20 reviewed it when you had a chance to get to court?

21 A. Yes, I'm looking at it now.

22 Q. Thank you, okay.

23 MR. FLEMING: Your Honor, may I approach the
24 witness?

25 JUDGE BAXTER: What are you going to show him this

1 time?

2 MR. FLEMING: Interrogatories and production and
3 sworn affidavit.

4 JUDGE BAXTER: You may.

5 Q. Do you see the date on that affidavit?

6 A. August 2nd, 2003.

7 Q. All right. Now I would like to show you, is that
8 your signature and sworn affidavit?

9 A. Yes, it is.

10 Q. And the date?

11 A. 29th day of September, 2004.

12 Q. Is that after the affidavit or before?

13 A. After.

14 Q. Thank you. Thank you. Just one more question.

15 On number seven in your interrogatories and production you
16 were asked, were you aware that on August 2nd the plaintiff
17 filled out a sworn affidavit for Tyrone Colbert when you
18 first saw it --

19 MR. MERICLI: I renew my objection, the same
20 objection I have made.

21 JUDGE BAXTER: It's overruled. Go ahead and ask
22 your question

23 BY MR. FLEMING:

24 Q. And you state under oath, no, I was not aware that
25 inmate Fleming filled out an affidavit for any of that.

1 MR. FLEMING: No further questions.

JUDGE

2 BAXTER: Mr. Mericli?

3

4 CROSS-EXAMINATION

5 BY MR. MERICLI:

6

7 Q. Is the SMU -- Well, you heard Lieutenant Krieder's
8 testimony --

9 A. Yes, sir.

10 Q. And you heard him discuss about how the SMU is a
11 stepped program?

12 A. Yes, sir, it's a phased program.

13 Q. A phased program, thank you. Do you have any
14 recollection about whether, and if so, how far during his
15 period of time in the SMU at Camp Hill Mr. Fleming progressed
16 through the phases?

17 A. He progressed all the way down to phase two, which
18 meant he could come out and work on the tier without
19 restraints.

20 Q. Did this occur after the August 11th, 2003
21 misconduct that Wittel wrote him?

22 A. I believe it did, yes.

23 MR. MERICLI: No further questions, thank you.

24 JUDGE BAXTER: Mr. Fleming?

25

1 REDIRECT EXAMINATION

2

3 BY MR. FLEMING:

4

5 Q. So would you say that by me coming out my cell in
6 the SMU in this phase without restraints is a good or bad?

7 A. It's good, it means you progressed through the
8 program without any problems.

9 MR. FLEMING: No further questions. JUDGE

10 BAXTER: You may step down. Thank you very much.

11 THE WITNESS: Thank you.

12 MR. FLEMING: Thank you.

13 JUDGE BAXTER: Is there anybody left, Mr. Fleming?

14

15 MR. FLEMING: One more.

16 JUDGE BAXTER: One more and probably feeling so
17 left out by now. All right, call your next witness.

18 MR. FLEMING: I'd like to call CO Wittel.

19 JUDGE BAXTER: Of course, we haven't seen Mr.
20 Wittel.

21 MR. FLEMING: Last but not least.

22

23 JESSIE WITTEL, first having been duly sworn,
24 testified as follows:

25

1 CLERK: Would you please state your full name and
2 spell your name for the record.

3 THE WITNESS: Jessie M. Wittel, W-I-T-T-E-L.

4

5 **DIRECT EXAMINATION**

6 BY MR. FLEMING:

7

8 Q. How are you employed?

9 A. Corrections Officer at SCI Camp Hill.

10 Q. Thank you. How long have you been employed --

11 A. Almost five years.

12 MR. FLEMING: Your Honor, may I approach the
13 witness?

14 JUDGE BAXTER: With?

15 MR. FLEMING: Exhibit 8.

16 JUDGE BAXTER: You may.

17 BY MR. FLEMING:

18 Q. I just want to ask you if you're familiar with the
19 document right here (indicating)?

20 A. No.

21 Q. Thank you. I'd like to direct your attention to
22 August 11th, 2003. You issued me, the plaintiff, a misconduct
23 for refusing to obey a order, using abusive, obscene or
24 inappropriate language to an employee. Can you explain that,
25 please?

1 A. You want me to explain the misconduct --

2 Q. The --

3 A. -- Or what? The events which happened?

4 Q. Well, it's the same thing. The misconduct or the
5 events, it would be the same thing.

6 JUDGE BAXTER: How about you ask him for one now
7 and one next.

8 Q. Explain your misconduct, what -- what it was
9 issued for?

10 A. It was issued for refusing to obey an order and
11 using obscene language.

12 Q. That's what it -- the incident?

13 A. The incident?

14 Q. Yes.

15 A. The incident was me and Officer Allen were
16 escorting an inmate, and Sergeant Kreider was out in the yard.
17 There was banging come from the "D" side -- the "D" side,
18 downstairs. Sergeant Kreider directed me in the general area
19 to see where that banging was coming from.

20 I went up to your door, clearly saw you sitting on your
21 desk banging on the window, yelling outside. I gave you three
22 orders to stop, three direct and separate orders to stop the
23 banging. I believe you cussed me out for a few seconds, and I
24 continued on with my duties.

25 Q. You says sitting on my bed banging on the window?

1 A. No, I set said sitting on your desk banging on the
2 window.

3 Q. Okay. Okay, you have here on this misconduct two
4 witnesses. Can you explain why you signed their names instead
5 of them?

6 A. That is protocol. If there was a -- If there
7 would have been inmates around there who would have saw it, I
8 would have put inmates down as witnesses. Did I not sign
9 anybody's name. I printed names. Nobody else signed that
10 misconduct, it was just me.

11 Q. Were they in the immediate area during the
12 incident?

13 A. They had involvement in the misconduct.

14 Q. It would have been easier for them to sign it
15 since them being right there?

16 A. The reason for me putting those witnesses are --
17 are for my credibility in case I would have been called to the
18 hearing examiner when he brought the charges up against you.

19 Q. Okay. Were they in the immediate area at the time
20 of the incident?

21 A. Yes, they were.

22 Q. Meaning the signatures could have been signed by
23 them?

24 A. There's no signatures on that besides -- In that
25 area there's no signatures.

1 Q. All right, I'm moving on before I get -- This is a
2 document in front of you on the screen there?

3 A. Correct.

4 Q. I'd like to show this to you, see if you are
5 familiar with this document. You can go ahead and read it.

6 A. I've seen it multiple times.

7 Q. So you --

8 A. Just today.

9 JUDGE BAXTER: He's been sitting down there.

10 Q. I'm talking about beyond you just sitting in this
11 courtroom?

12 A. It was issued to me when this court case came up,
13 I got one.

14 Q. That's the only time -- That's the only time you
15 seen it?

16 A. Yes.

17 Q. You never seen it before?

18 A. No.

19 Q. Can you see this name where my pen is at?

20 A. Yes.

21 Q. Did he take a action on you?

22 A. Excuse me?

23 Q. Did he take any action on you for this?

24 A. I don't understand your question.

25 Q. Did he take any civil action on you?

1 A. I believe he attempted to.

2 Q. And you were never made aware of this document as
3 the others were?

4 A. I still don't understand your question entirely.

5 Q. Prior to what we're here for now, did you ever see
6 this sworn affidavit?

7 A. No.

8 Q. Never?

9 A. Not that I'm aware of.

10 Q. So the other officers seen it but you never seen
11 it?

12 MR. MERICLI: Objection, to the form of the
13 question. I like to have a foundation --

14 JUDGE BAXTER: I don't think that was the
15 testimony. I don't think that was the testimony anyway. It's
16 very hard to ask a question when you are summarizing former
17 testimony.

18 MR. FLEMING: All right.

19 JUDGE BAXTER: We'll be on you to make sure you
20 get it right, that's what he's complaining about.

21 MR. FLEMING: All right.

22 JUDGE BAXTER: But he answered the question. He
23 said he doesn't believe he's seen it before this case.

24 Q. So you never -- okay.

25 JUDGE BAXTER: Yeah, you asked that.

1 MR. FLEMING: Is that paper still up there or do I
2 got it?

3 JUDGE BAXTER: The affidavit is on the machine.

4 MR. FLEMING: No, I'm talking about the interrogatory.
5 Here we go right here. Can I approach the witness, your
6 Honor?

7 JUDGE BAXTER: With that document?

8 MR. FLEMING: Yes.

9 JUDGE BAXTER: You may.

10 BY MR. FLEMING:

11 Q. Are you familiar with that (indicating), the
12 production and interrogatories?

13 JUDGE BAXTER: Is that his own?

14 MR. FLEMING: Wittel's.

15 A. Yes.

16 JUDGE BAXTER: Okay, I think that's Defendant's
17 Exhibit "I".

18 Q. Is that your sworn statement on there?

19 A. That's my signature.

20 Q. All right, thank you. Did you state on number
21 seven under oath, that you were never aware of any affidavits
22 -- And this is your statement under oath?

23 A. I signed that statement.

24 JUDGE BAXTER: What was the answer? I'm not
25 looking at it. Tell me what the answer was to that.

1 MR. FLEMING: The answer to my question, he said, no. He
2 said, no.

3 JUDGE BAXTER: Okay.

4 MR. FLEMING: Okay, I'm going to move ahead.

5 Q. And by saying that you're aware that it was an
6 action taken on you regards to the document in front of you?

7

8 JUDGE BAXTER: A legal suit -- Are you aware there
9 was a saw lawsuit against you regarding this incident?

10 A. Yes, I knew there was a lawsuit -- an attempted
11 lawsuit against me.

12 MR. FLEMING: No further questions. JUDGE
13 BAXTER: Mr. Mericli?

14

15 CROSS-EXAMINATION

16 BY MR. MERICLI:

17

18 Q. Officer Wittel, at the time you wrote the
19 misconduct against Mr. Fleming, were you aware that he had
20 written this affidavit that's on the screen in front of you --

21 A. No.

22 Q. -- On behalf of Mr. Colbert?

23 A. No.

24 Q. It's fair to say that sometime after that you
25 became aware that that happened?

1 A. Yes.

2 Q. But you didn't know about it at that time?

3 A. No.

4 Q. When you were asked on your interrogatories if you
5 could just simply refresh your recollection there, you were
6 asked basically if you knew on August 11th about this -- of
7 2003 about this affidavit, right?

8 A. Correct.

9 Q. And your answer as always is?

10 A. No.

11 MR. MERICLI: Thank you.

12 MR. FLEMING: All right.

13

14 REDIRECT EXAMINATION

15 BY MR. FLEMING:

16

17 Q. So you do state that sometime after you did become
18 aware of this affidavit?

19 A. When I saw --

20 MR. MERICLI: Objection, relevance. JUDGE
21 BAXTER: Well, it's already been asked and answered anyways,
22 so objection overruled. This is the last time you're asking
23 the question. Go ahead.

24 MR. FLEMING: Okay. I have a different question
25 because --

1 JUDGE BAXTER: All right, go ahead.

2 BY MR. FLEMING:

3 Q. Did you -- How long after that you became aware?

4 A. I became aware of that affidavit when I signed for
5 it.

6 Q. Can you recall when you signed for it? Speaking
7 of the --

8 A. I believe it was 2004.

9 MR. FLEMING: No further questions. JUDGE
10 BAXTER: Okay.

11 MR. MERICLI: I just have --

12 MR. FLEMING: I'm speaking of the affidavit up
13 here now (indicating).

14 JUDGE BAXTER: Yes.

15 MR. FLEMING: Okay.

16

17 RECROSS-EXAMINATION

18 BY MR. MERICLI:

19

20 Q. Do you remember what was involved in this supposed
21 lawsuit from Colbert?

22 A. Yes.

23 Q. Were you served with a complaint?

24 A. I don't recall. What do you mean by complaint?

25 Q. A complaint, Mr. Colbert versus Mr. Wittel and

1 others?

2 A. Yes.

3 Q. You saw a complaint?

4 A. Yes.

5 Q. A written complaint in federal court?

6 A. Yes, not in court but --

7 Q. The complaint was filed, it was purported to be
8 filed in federal court?

9 A. Yes.

10 Q. Did anybody take your deposition under oath? Did
11 they take your testimony under oath?

12 A. I don't recall.

13 Q. You don't recall either Mr. Colbert paying for a
14 court reporter --

15 MR. FLEMING: Objection.

16 JUDGE BAXTER: Basis? He hasn't finished his
17 question yet, but what's your basis?

18 MR. FLEMING: He's leading too far away from this
19 chase.

20 JUDGE BAXTER: So relevance?

21 MR. FLEMING: Yeah, relevance.

22 JUDGE BAXTER: Well, you opened the door. You
23 asked the question, you opened the door.

24 MR. FLEMING: All right.

25 JUDGE BAXTER: So I'm going to overrule the

1 objection.

2 MR. FLEMING: All right.

3 BY MR. MERICLI:

4 Q. Are you are you aware of what a deposition is?

5 A. If you could explain to me.

6 Q. That may be my mistake, and I apologize.

7 A. All right.

8 Q. A deposition is when you take somebody's,
9 testimony, generally two lawyers or if somebody is
10 representing themselves, they'll take somebody's testimony with
11 the court reporter acting as a person from the court and
12 putting them under oath and taking sworn statements just like
13 we are here today in court.

14 Did anything like that happen in this Colbert case?

15 A. No.

16 Q. You got written interrogatories in this case, from
17 Mr. Fleming?

18 A. Yes.

19 Q. From Mr. Fleming?

20 A. Yes.

21 Q. And he showed them to you here today?

22 A. Yes.

23 Q. In Colbert's case, did you get any interrogatories
24 like that?

25 A. No.

1 Q. All you really know about Colbert's case is that
2 he filed a complaint?

3 A. Yeah.

4 Q. And then like so many of these prisoners who write
5 cases, it just withered and died?

6 A. Correct.

7 MR. MERICLI: Okay, thank you.

8

9 FURTHER REDIRECT EXAMINATION

10 BY MR. FLEMING:

11

12 Q. But do you remember seeing that document in front
13 of you --

14 MR. MERICLI: Objection, asked and answered.

15 JUDGE BAXTER: That's not what he said, Mr. Fleming.

16 He said he never saw it until this case. He answered that 15
17 times.

18 MR. FLEMING: All right. I don't have anything.

19 JUDGE BAXTER: Are you going to ask him something
20 else?

21 JUDGE BAXTER: No, I'm done.

22 JUDGE BAXTER: You're done?

23 MR. FLEMING: Yeah.

24 JUDGE BAXTER: You may step down, Officer Wittel.

25 THE WITNESS: Thank you, ma'am.

1 JUDGE BAXTER: Was that your last witness, Mr.
2 Fleming?

3 MR. FLEMING: That's it.

4 JUDGE BAXTER: Do you rest your case?

5 MR. FLEMING: For today.

6 JUDGE BAXTER: No, your case.

7 MR. FLEMING: Yeah, I'm done, I rest my case.

8 JUDGE BAXTER: Okay, Mr. Mericli?

9 MR. MERICLI: I'd like to proceed to a verdict
10 stage in this case on the basis of the existing record.

11 JUDGE BAXTER: All right, and is there any argument
12 you'd like to put forth at this time or would you like to wait
13 until morning to do that?

14 MR. MERICLI: I'd be prepared to make an argument
15 right now.

16 JUDGE BAXTER: Let's proceed to that, go ahead, I
17 have a half hour.

18 MR. MERICLI: Would you like me to begin?

19 JUDGE BAXTER: Yes, sir.

20 MR. MERICLI: I think that essentially the
21 failings in this case are twofold, factual and legal. In
22 terms of the factual, I'd like to begin first and -- If I
23 could just have a moment to consult the statement of factual
24 and legal issues in dispute.

25 The evidence and testimony introduced here today,

1 without belaboring the point, I believe demonstrates that as a
2 matter of fact Mr. Tiller, a correctional counselor for the
3 department of corrections, then a sergeant of the department
4 of corrections, did not kick Mr. Fleming in the right ankle in
5 a failed effort to trip him.

6 JUDGE BAXTER: By the way, this is the document we
7 did yesterday. That's where he's going from, all right.

8 MR. FLEMING: Yes.

9 JUDGE BAXTER: All right.

10 MR. MERICLI: I think -- I would invite the Court,
11 however, having done so myself on my VCR at home, to
12 scrutinize the segment one of the first tape very closely and
13 you will see, if you do, it goes by so quickly, it's just a
14 very brief preliminary. But if you do, I found it best to
15 rewind it and look at it as it was rewinding. There you will
16 see, unless my senses deceive me, that there is no contact of
17 any sort between Mr. Tiller and Mr. Fleming before Mr. Fleming
18 stumbles. And then he immediately proclaims that he's been
19 the victim of an attempt to be kicked. I believe that I saw
20 daylight there. I believe that there was no extension of a
21 leg, there was no trip, there was nothing like that.

22 There's also a remark later on where someone says
23 you're limping on the wrong leg, you've gotten confused. And
24 I think we know that Mr. Fleming is someone that at the very
25 least you may say about him, that he has a sense of humor and

1 he laughed in response to that.

2 The medical and nursing evaluations speak for
3 themselves. You can look at Nurse Klos's examination. It's a
4 textbook. It could be used in a nursing school to portray how
5 to examine somebody who is complaining of those types of
6 injuries.

7 You heard from Physician's Assistant Telega. It took
8 him a little while but he ultimately arrived at a diagnosis.
9 And he is, after all, a physician's assistant. A diagnosis on
10 the 17th of May of malingering. So that is the end of the
11 ankle.

12 Now moving on --

13 JUDGE BAXTER: And the wrist.

14 MR. MERICLI: And the wrist -- Moving on to the
15 wrist, the wrist does not have the benefit of a videotape.
16 But it would require -- Since Mr. Sullivan, Corrections
17 Officer Sullivan is accused of having done it at the same time
18 that he was videotaping the event, he would have had to nimbly
19 drop kicked the wicker pie slot shut, and that would require
20 not only that manner of agility but also to do so while two
21 other members were attempting to disengaged handcuffs. And
22 you would have to assume that not only he but Mr. Tiller are
23 lying about the event. He wasn't the person who was suppose
24 to be involved or engaged. He was doing something else. We
25 know that.

1 The other point is the medical evidence is completely
2 -- it completely fails to substantiate that occurrence. After
3 all you heard, when I cross-examined Mr. Fleming he said his
4 skin was abraded, there was blood, there was something like --
5 it wasn't a cut that required stitches but I got the sense
6 that he said it was cut and bleeding. It wasn't cut and
7 bleeding and that certainly -- Unless everybody's lying in
8 some sort of massive conspiracy, Mr. Telega and Mr. Klos
9 certainly didn't see anything involving blood. So, in
10 addition to everything else, that's the end of that.

11 Now, moving to the gate, unless this is Allison in
12 Wonderland's world, unless I am in some sort of psychotic
13 break, he kicked the gate shut. The man did not shut the gate
14 on him, he kicked the gate shut. And I don't think we need to
15 argue that anymore. He didn't -- Nothing happened to him, he
16 did something to somebody else unless my senses deceive me.
17 Now, that concludes the excessive force presentation.

18 I would simply note as a final fill-in, that Judge
19 Hawkberg's -- Although in this case I think it would be
20 worthy, and I might invite attention only in the form of a
21 footnote that this is a matter of de minimus injury and de
22 minimus complaint of use of force anyway. So legally
23 speaking, it probably didn't arise to that level.
24 However, I think obviously the prudent and best choice under
25 the circumstances was to try it as a matter of

1 fact. We have done so now, so any -- And after all, Judge
2 Hawkberg's analysis is in fact out on a limb. We don't know
3 how that's going to be treated by the third circuit. It's a
4 novel and interesting concept to reconcile two different types
5 of laws. But it is certainly fraught with potential for
6 rejection. It might be interesting to use it in this case
7 because I think it could go up as an alternative analysis. As
8 I suggested, there's a basis for a strong verdict, as a matter
9 of fact, that excessive force did not occur.

10 As for the retaliatory misconducts, the timing just
11 doesn't work to begin with. He files -- He signs --
12 JUDGE BAXTER: Am I missing something on the whole last
13 section? Every single witness?

14 MR. MERICLI: Yes.

15 JUDGE BAXTER: It seemed to me that the answer was
16 consistent, and he was trying to elicit that answer. I was
17 missing something. I'll talk to him when he argues. But was
18 I missing something.

19 MR. MERICLI: That was the Camp Hill ones. We can
20 begin with them if you like. The thing about the Camp Hill
21 ones is, first, it's important to remember that I asked
22 Sergeant Kreider that for clarification. They're not accused
23 of having retaliated against him for any lawsuit he filed in
24 Albion or for this lawsuit in general. They were accused of
25 some kind of every day nondescript -- There was an event every

1 day, nondescript event that occurred in the SMU involving
2 Colbert beefing about a random cell search that happened.

3 At the time they had no idea that Colbert and Fleming,
4 that Fleming and Colbert had any friendship or relationship or
5 were talking to each other. And nine days later they have a
6 completely unrelated misconduct -- After all, this is the SMU
7 -- that they give to Fleming. Then subsequently Fleming says,
8 well, you know, I was -- you just did this because, you know,
9 I was one of Colbert's witnesses. And he just said we had no
10 idea you were one of Colbert's witnesses and we don't know
11 anything about it. Then, of course, he's attempting to get
12 them coming and going. Once he says, at some point or another
13 you know -- Now you know I was Colbert's witness. You get a
14 bit -- You get a lot of confusion there.

15 The simple fact is, at the time that he was banging on
16 the window and Krieder said go, Mr. Wittel or Jessie, go in
17 and check and see who's banging on the window and tell him to
18 quit it. And he sees him sitting on the desk which is right
19 next to the window, and he sees him banging on the window.
20 And he says stop it three times and he doesn't stop it. And
21 words are exchanged, so he writes him up. And he comes back
22 and he puts down that Allen is with him and -- In that
23 arrangement, Krieder's an ear witness.

24 So they all are witnesses to some extent of what
25 happened. Like every another case, each one is a building

1 block. So they put it together. At that time they had, you
2 know, they had no idea they're was going to be any argument
3 that there was some connection between that and something they
4 did nine days earlier when Colbert, who is across the hallway
5 from Fleming or at least shall we say, who's cell is located
6 in the approximate place, complained about random cell search.
7 They just didn't know about that. And subsequently that was
8 raised as a chimera of sorts, of some sort of bugaboo that
9 was, that he conjures up.

10 As the Camp Hill gentleman made clear to us, you can't
11 work in a place like that and pay too much attention to people
12 threatening you with lawsuits because it happens so frequently
13 and so often that you just become desensitized. There
14 couldn't have been a retaliation animus at Camp Hill because
15 basically he progressed through the SMU. They didn't write
16 very many misconducts. And none of them, including this one,
17 were for any anything particularly serious. And he was a tier
18 worker a couple times which meant he was up to phase two.

19 What kind of retaliatory animus is that? You get to be
20 one of their honest students. That isn't much of a
21 retaliatory animus, and that's it as far as the Camp Hill
22 argument.

23 As far as Albion is concerned --

24 JUDGE BAXTER: Any renewal of the argument about
25 default?

1 MR. MERICLI: The default, I'm awfully sorry I
2 forgot that, that was the argument though. That was made in
3 connection yesterday with the rule 52 (c).

4 JUDGE BAXTER: About the Camp Hill --

5 JUDGE BAXTER: That would be an alternative.
6 That's another problem when you think about the retaliatory
7 animus. This man thought so little about it that he basically
8 let it wither and die on the vine. He didn't appeal it in a
9 timely fashion. If you look at Superintendent's denial of the
10 appeal in September 2003, he said, where have you been all
11 this time?

12 So that's not only a matter of procedural default as we
13 discussed yesterday under Al-Hafees and McKelvey, but it's
14 also a factual matter.

15 JUDGE BAXTER: I see.

16 MR. MERICLI: It makes you think, oh, how could
17 there be such a retaliatory animus because he forgot about the
18 whole thing for a couple months.

19 JUDGE BAXTER: All right.

20 MR. MERICLI: The Albion retaliatory misconducts I
21 think -- Well, first we can go with the ones that have to do
22 with him lying about the excessive force incidents. The ones
23 written on him by Weaver and Robinson in the course of their
24 investigations.

25 The arguments I made before applies equally there.

1 Since in fact he was lying about those two excessive force
2 incidents, and we have demonstrated that he was lying about
3 those two excessive force incidents, even if I have a burden
4 of proof under Carter versus McGrady I think we have the
5 clarity of the demonstration of the misconduct, the conviction
6 of the misconduct, and the fact of the misconduct that is a
7 legitimate penal logical purpose and that that would discount
8 any retaliatory animus.

9 But I don't think there is a retaliatory animus, and
10 that's where the timing comes in that I was talking about that
11 a little bit earlier. And the timing is his suit is signed
12 May 13th, but it isn't actually received by the United States
13 District Court until May 17th of 2002. And it isn't actually
14 ordered served until May 22nd of 2002. And the excessive
15 force incident happens on May 14th of 2002. So, you can't be
16 -- It can't be retaliated against for a suit you haven't filed
17 yet, or that practically speaking no one could have known
18 about it.

19 Unless there was some evidence that they knew they
20 would -- that he was writing a particular lawsuit. He could
21 be writing a habeas. He could be writing on another civil
22 matter. He could be writing a PCRA case. He could be writing
23 on a direct appeal. You don't know what he's doing legal
24 research on. He could be working on a family law matter or
25 something. They knew he was in the law library. They didn't

1 know anything else.

2 And the other problem with that whole analysis was, who
3 was he suing? He was suing the top brass at Albion. All the
4 big names who were officials. But he wasn't suing any of
5 these men. So it doesn't make any sense. The predicate for
6 causation for retaliation claim really just isn't there.

7 And the problem with the other retaliations, one
8 was on August 2nd and the other one was on August -- I guess
9 one was August 2nd, the broken handcuff key. The problem with
10 that retaliation is the opposite. It's too far away from the
11 suit. It's in August. The suit was in May. Mr. Maldonado
12 and Mr. Davison, correction officers, are not named in that
13 suit. If you see, they're all named in the supplemental
14 complaint that's filed on September the 4th, 2002. The first
15 in the series of supplemental complaints. That's when they
16 come into the picture.

17 So all this stuff happened before they were involved.
18 And it's an extremely complicated matter to look at it and
19 unravel it. And I apologize if I failed to do so sooner and
20 under the circumstances to its testament to the necessity for
21 a trial, that the Court proceed, that a trial in fact has made
22 in fact what is a murky case very clear. But I think I've
23 made my point.

24 JUDGE BAXTER: I understand your point. In
25 rebuttal, in response, you may argue at this point.

1 MR. FLEMING: All right. I want to say due to the evidence
2 presented in this case by the plaintiff, me, the affidavits,
3 the signed statements, the medical reports, the examinations,
4 the videotapes, and also the witnesses that were not named as
5 parties that participated, it's evidence that I presented
6 enough for this case to proceed. Their attorney statement
7 about procedural default, I mean he had years to make this
8 claim. This is not the right time I feel to claim a procedure
9 default when you're suppose to make that at the earliest
10 possible stage. And you know it's just -- Out of the three
11 prongs, two was clearly already met.

12 JUDGE BAXTER: Of retaliation, that's correct.

13 MR. FLEMING: Now the causal part is what I'm
14 explaining to you for this proceeding. It clearly states, to
15 satisfy a third prong of a retaliation claim, this is a report
16 and recommendation, and therefore must allege a causal
17 connection between the exercise of his constitutional rights
18 and the defendants adverse actions.

19 JUDGE BAXTER: Its causal connection.

20 MR. FLEMING: Its causal connection. Plaintiff's
21 allegations made clear that the filing of the complaint in
22 this matter and in the filing of a sworn affidavit, also the
23 interrogatories, the sworn statements, the testimony and other
24 things occurred within at least a temporal proximity of the
25 alleged adverse actions.

JUDGE

1 BAXTER: When that R and R was written I said your allegations
2 said that. Now today you had to prove that.

3 MR. FLEMING: Yeah.

4 JUDGE BAXTER: So you're saying the testimony has
5 proven that?

6 MR. FLEMING: This is what I'm saying, this is
7 what's been proven so far.

8 JUDGE BAXTER: All right.

9 MR. FLEMING: I would suggest a causal link to
10 sufficient -- to satisfy the third prong of the plaintiff's
11 retaliation claim. As Mr. Mericli said, the Al-Hafees versus
12 McKelvey case, the burden is clearly on the defendant.

13 And I feel that this motion that he got in should be
14 denied and they present their evidence and show me what they
15 got and the Court. That's all I got.

16 JUDGE BAXTER: All right, thank you. Well, I have
17 to slow up the videotape and look at it backwards, Mr.
18 Mericli?

19 MR. MERICLI: Yes. I want to emphasize in case I
20 left any misimpressions with Mr. Fleming that, you know, we
21 rested our case on the testimony of --

22 JUDGE BAXTER: As well.

23 MR. MERICLI: As well, as it developed in the --

24 JUDGE BAXTER: That's what happens in situations when
25 you put the defendant's on the stand. He has to ask them --

1 So both cases are kind of given at the same time. So he rests
2 his case as well.

3 All right, I have to look through the information
4 and obviously do my job now, do my work. We'll be adjourned
5 now until two o'clock tomorrow afternoon.

6 MR. FLEMING: Two o'clock?

7 JUDGE BAXTER: Pardon me?

8 MR. FLEMING: Okay.

9 JUDGE BAXTER: At which time I will render a
10 decision.

11 MR. MERICLI: Thank you, your Honor.

12 (Off-the-record discussion.)

13 JUDGE BAXTER: Back on the record. I will strike
14 my order to return at two o'clock tomorrow, and instead I will
15 review the transcript of the proceedings as well in order to
16 render a verdict. It will be rendered and findings of fact
17 and conclusions of law on paper and not in open court.

18 And so therefore, we will not meet tomorrow at two
19 o'clock. I'll do it as quickly as I can.

20 (At which time, 4:25 p.m., the proceedings were
concluded.)

21

22

23

24

25

1 C E R T I F I C A T I O N
2

3 I, Denice A. Grill, RMR, a Court Reporter and
4 Notary Public in and for the Commonwealth of Pennsylvania, do
5 hereby certify that the foregoing is a true and accurate
6 transcript of my stenographic notes in the above-captioned
7 matter.

8

9

10

11 Denice A. Grill, RMR
12 Registered Merit Reporter

13

14 DATED: _____

15

16

17

18

19

20

21

22

23

24

25